

# A GUIDE TO THE HOUSING ACT'S

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# A GUIDE TO THE HOUSING ACTS.





A GUIDE

# THE HOUSING ACTS

WITH APPENDICES

CONTAINING

THE STATUTES AFFECTING HOUSING, 1882-1903.  
TOGETHER WITH THE FORMS AND CIRCULARS OF THE  
LOCAL GOVERNMENT BOARD.

BY

ARTHUR P. POLEY, ESQ., B.A.,

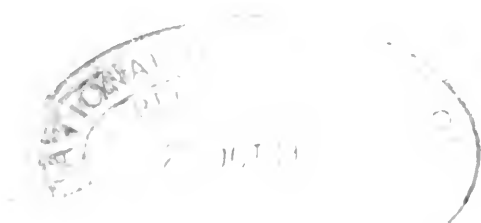
OF THE INNER TEMPLE AND MIDLAND CIRCUIT  
BARRISTER-AT-LAW.

LATE SCHOLAR OF ST. JOHN'S COLLEGE, OXFORD

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## PREFACE.

THIS little book is intended for the use of Local Authorities, Councillors, Surveyors, Solicitors, and others engaged in carrying out the administration of the Housing Acts. There has been a general complaint by Local Authorities of the difficulties they experience in grasping the powers they possess under the complicated sections of these Acts. It is trusted that this little work will prove of assistance to them. The effect of the recent Act (3 Edward 7. c. 39) is embodied in the book, and the text of the Act also appears with the other Acts in the Appendix, so that the practitioner can refer to the wording of any particular section when he deems it necessary. The recent Act effects a modification of the law in many important ways, notably in providing for the passing of schemes in certain instances without parliamentary sanction, in allowing closing orders to be made in certain instances without the necessity of serving abatement notices, where it is clear

that a house could not be made fit for human habitation; in giving additional powers for the provision of shops, recreation grounds, or other buildings or land which in the opinion of the Local Government Board will serve a beneficial purpose in connexion with the requirements of the persons for whom the dwelling accommodation or lodging-houses are provided, and in insisting on, where necessary, of the provision of housing schemes by railway companies and other undertakers who compulsorily acquire land for the purposes of their undertaking. Special attention is directed to the Local Government Board circulars which are printed in the Appendix, which should be read in connexion with the borrowing powers.

Notwithstanding this last amending Act, legislation affecting the housing of the working classes is in a very unsatisfactory condition, and the law requires considerable simplification.

At present there are no less than three schemes of compensation provided, under Parts I., II., and III., necessitating references to a special scheme for compensation under

the schedule to the Act with reference to Part I., and references to the Lands Clauses Acts and the Public Health Act of 1875, under Parts II. and III., and, as Part III. may be utilised in conjunction with Parts I. or II., the different procedures tend to considerable embarrassment, which should certainly not be the case in Acts which an ordinary layman should be easily able to grasp.

In cities including the city of London, boroughs, and urban districts, but not in the county of London, Local Authorities can either resolve to make an improvement scheme under Part I. or a reconstruction scheme under Part II. There seems in reality rather a distinction without a difference in substance between the two except in procedure—the former is supposed to be larger in its nature than the other—but there seems no valid reason why the artificial distinction should not be swept away and the Local Authority be left to make a housing scheme subject only to the approval of the Local Government Board.

In London, as the county council are the authority for an improvement scheme and the

borough councils are authorities for a reconstruction scheme, constant friction arises as to whether a scheme should be labelled by one title or the other, and an ingenious procedure is devised by which each authority endeavours to shift the burden on the other, though, as each may be compelled to contribute a portion of the cost as the result of an appeal to the arbitration of the Home Secretary, this procedure results in long delays, and in the result to a great waste of public money. I suppose there are few borough councillors who do not complain of the time occupied in getting any scheme sanctioned.

A reconstruction scheme may involve a larger expenditure than an improvement scheme. Nevertheless, the principle of betterment is applied to a reconstruction scheme and not to an improvement scheme, but it is difficult to see the reason why.

Under an improvement scheme, when the land is cleared by a Local Authority and set aside for the erection of working men's dwellings, the Local Authority must try to sell or let the land, but they must not build without the express sanction of the Con-

firming Authority. If they fail to sell or let the land within five years the Confirming Authority may order the land to be sold by public auction or public tender, but five years seems a long time to wait whilst the rate-payers' money remains unremunerative. Local Authorities may well be unwilling to incur the cost entailed on the making of improvement schemes and the procedure might well be made more elastic.

There are many other points to which the attention of the reformer may be referred, and on which experience has taught that amendment is desirable. Possibly, some day the matter may be taken in hand and a more efficient Housing Act passed.

A. P. P.

1, King's Bench Walk, Temple,  
*November 16th, 1903.*





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## THE HOUSING ACTS.

THE Housing of the Working Classes Act of 1890 is a Consolidating Act. It repeals a number of Acts dealing with artisans' and labourers' dwellings : at the same time it makes provision :

- (1.) For the demolition of unhealthy areas by means of improvement schemes, and the rehousing of the disoused workmen. The legal machinery by which this may be effected is contained in Part I. of the Act.
- (2.) Part II. of the Act deals with the closing of insanitary houses, the removal of obstructive houses, and the making of a reconstruction scheme and matters pertinent thereto.
- (3.) Part III. deals with the establishment of working class lodging houses.

The four remaining Parts deal with the application of the Act to Scotland and Ireland and miscellaneous matters. The Act applies to the United Kingdom.

The Act has been followed by several other Acts. These are the 56 & 57 Vict. c. 33. ; the 57 & 58 Vict. c. 55. ; the 59 & 60 Vict. c. 11. ; the 59 & 60 Vict. c. 31 ; the 63 & 64 Vict. c. 59. ; the 3 Edward VII.

c. 39. The most important of these are the 63 & 64 Vict. c. 59. and the 3 Edward VII. c. 39.

The matter contained in these various Acts is dealt with in four chapters, and the Acts for convenience of reference are given in the Appendix.

Chapter I. deals with Improvement Schemes.

Chapter II. with Reconstruction Schemes and the various powers of Local Authorities with reference to Insanitary and Obstructive Dwellings.

Chapter III. with Lodging-house or Working-class Accommodation.

Chapter IV. with the Housing Scheme that may be required when undertakers compulsorily acquire land for the purposes of their undertakings.

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## CHAPTER I.

### IMPROVEMENT SCHEME.

THE necessity for an improvement scheme arises from the existence of an unhealthy area.

What is an unhealthy area? <sup>1</sup> It is defined under Part I., section 4, as an "area within which any houses, courts, or alleys are unfit for human habitation, or where the narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses or groups of houses within such area, or the want of light, air, ventilation, or proper convenience, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the

---

<sup>1</sup> From the social point of view unhealthy areas have a direct bearing on the physical and moral condition of the people. An impaired vitality, occasioned by the absence of proper currents of air and imperfect ventilation, allows tuberculosis to claim its victims and fevers to germinate and spread. Physically many of the workers are unable from sheer debility to work to the full and natural extent of their powers, and, consequently, there is a loss to the community too often from exhaustion. Drink, as a stimulus, is resorted to, and becomes ultimately a habit. Ann Gould, an American writer, who has made a study of this subject, writing in 1899, says:—"While I am not fond of seeking for cause and effect in conjunctions of circumstances, yet I am bound to believe that the sequel to the massing of saloons in low neighbourhoods where the worst housing conditions exist is more than a simple coincidence. It occurs too often to be only that. The most congested districts of New York are also the regal domains of liquorism. In one place 148 saloons are all located within a space 514 yards long by 375 yards wide. St. Giles' Ward in Edinburgh contains 127 drinking places, and 234 shops where food is sold. This ward contains one-eleventh of the population of the city, but it furnishes one-third of its total crime. Notwithstanding that 17½ per cent. of the area is made up of parks, the death-rate is 40 per cent. higher than for the whole city. Glasgow's famous district 14 contains 43 public houses to 164 premises for food supply. This district consumes more life than it produces."

health of the inhabitants either of the buildings in the area or of neighbouring buildings." If the evils connected with such houses, courts, or alleys, and the sanitary defects in such area cannot be effectually remedied, except by rearrangement and reconstruction of the streets and houses or of some of them, the area may be properly the subject of an improvement scheme. The existence of such an unhealthy area is a question of fact, not based solely on the question of the amount of illness in the area, as under the Artizans' Dwelling Act, 38 & 39 Vict. c. 36., now repealed.<sup>1</sup>

Under the Housing Acts the following points, amongst others, may fairly be considered :—

- (1.) The prevalence of illness or the death-rate in the area.
- (2.) The dampness and absence of sunshine and light.
- (3.) The existence of a state of things such as the narrowness of the streets or insufficient air spacing, which would not now be permitted if the streets were to be laid out under the Building Acts or the Local Authorities' byelaws.

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<sup>1</sup> An unhealthy area under that statute was defined as an area in which houses, courts, or alleys were unfit for habitation, or where diseases indicating a generally low condition of health were from time to time prevalent, and might be reasonably attributed to the closeness, narrowness, and bad arrangement or the bad condition of the streets and houses, or groups of houses, within the area, or the want of light, air, ventilation, or proper conveniences or sanitary defects.



(4.) The provisions of the Public Health Acts or any local Acts dealing with nuisances.<sup>1</sup>

The officer who is responsible for examining into and discovering an unhealthy area is the Medical Officer of Health. Nevertheless the responsibility thrown upon him must not cause the Local Authority to neglect its own duty. Section 7 of the Act of 1885<sup>2</sup> enacts that "it shall be the duty of every local authority entrusted with the execution of laws relating to public health and Local Government to put into force from time to time, as the occasion may arise, the powers with which they are invested so as to secure the proper sanitary condition of all premises within the area under the control of such authority."<sup>3</sup>

### *The Medical Officer of Health.*

The Medical Officer of Health must be a properly qualified man. In Scotland, section 96 (4), he is styled the Medical Officer, and in Ireland, section 98 (7), the term includes the Medical Superintendent Officer of Health appointed under the Public Health Act of Ireland (1878). During his absence from his duties a qualified medical practitioner can act for him for six months or for a less period, and such temporary officer has all the duties and

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<sup>1</sup> Public Health Act, 1875, and amendment Acts, in the country; in London, The Public Health Act, 1891.

<sup>2</sup> 48 & 49 Vict. c. 72.

<sup>3</sup> This should be compared with section 32 of the Housing Act, pp. 134, 254.

authority of a Medical Officer of Health, but the appointment is subject to the approval of the Confirming Authority<sup>1</sup> (sections 26 and 79).

In London the County Council specially appoint Medical Officers of Health to carry out the provisions of the Act, section 76 (1), but the Home Secretary's consent is required to any such appointment. Such Medical Officers of Health or any Medical Officers of Health appointed by the London County Council (section 76 (2)) are deemed Medical Officers of Health of a Local Authority under the Housing Acts, and are consequently entitled to make representations to a Borough Council under Part II.<sup>2</sup>

It is an offence punishable on summary conviction to obstruct a Medical Officer of Health or any officer of the Local Authority (section 89) or the Confirming Authority in the performance of anything which the officer is required or authorised to do by the Act. A person convicted is liable to fine of £20.<sup>3</sup>

When a Medical Officer of Health (sections 4 and 5) has satisfied himself of the existence of an unhealthy area he is required to make an official

<sup>1</sup> Confirming Authority, *infra*, p. 14.

Medical Officers of Health are appointed under the Public Health Acts (London), 1891; under the Local Government Act, 1888, by County Councils; and under the Public Health Act, 1875. The officers referred to in the text are additional officers.

<sup>2</sup> *Infra*, p. 120.

<sup>3</sup> Offences punishable on summary conviction may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Act (section 90).

representation to his Local Authority. This official representation he makes when he sees cause to make it, though in London any Medical Officer of Health is empowered to make an official representation to the London County Council.

Before dealing with the official representation and with the machinery that can be employed to make the Medical Officer of Health or the Local Authority act, the Local Authority to whom the representation must be made should be ascertained.

### *Local Authority.*

In England and Wales, in urban districts which are boroughs, the borough council is the Local Authority (section 92 and Schedule I.).

In urban districts which are not boroughs the district councils. In London, outside the City area, termed the "County of London,"<sup>1</sup> the London County Council. In the City area the Common Council.<sup>2</sup> In Scotland the Local Authorities in districts under the Public Health Act (Scotland), 1897,<sup>3</sup> exclusive of parishes or parts of parishes over which the jurisdiction of a Town Council or of Police Commissioners or trustees exercising the functions of Police Commissioners does not extend ;

<sup>1</sup> In the Act, unless the context otherwise requires, the expression County of London means the Administrative County of London, exclusive of the City of London.

<sup>2</sup> 60 & 61 Vict. c. cxxxiii. s. 7.

<sup>3</sup> 60 & 61 Vict. c. 38, in substitution for the Public Health Act (Scotland), 1867.

and in Ireland the Borough or District Councils<sup>1</sup> are the Local Authorities.<sup>2</sup>

The official representation (sections 5 and 79 (2)) which the Medical Officer of Health is required to make must be in writing, and, though not prescribed by the Act, it should contain sufficient information to enable the Local Authority to consider its value.

### *Committees.*

Local Authorities generally carry out the bulk of their work by Committees, and the Housing Act (section 81) enables them to appoint committees chosen out of their own number; but these committees possess no borrowing powers, nor can they make rates or enter into contracts, and they are bound by all regulations and restrictions which the Local Authority chooses to impose upon them.

The Local Government Act of 1894, a subsequent Act, provides, by section 56, that a parish or district council may appoint committees consisting either wholly or partly of members of the council for the exercise of any powers which in the opinion of the council can be properly exercised by committees, but a committee cannot hold office beyond the next annual meeting of the council, and its acts require to be submitted to the council for their approval: provided that where a committee is appointed

<sup>1</sup> Local Government (Ireland) Act, 1898, 61 & 62 Viet. c. 37.

<sup>2</sup> Schedule I., p. 306.

by a district council for any of the purposes of the Public Health Acts, under this section, a district council may authorise its committee to institute any proceedings or do any act which the council might have instituted or done for that purpose other than the raising of a loan or the making of any rate or contract. Section 56, however, does not apply to borough councils which are governed by Section 200 of the Public Health Act of 1875, and the previously cited section 81 of the Housing of the Working Class Act. These sections are practically identical in their terms. Whether the approval of the authority is required to the acts of its committee appointed under the Housing Act is doubtful,<sup>1</sup> but probably no approval is required if the committee act within the regulations and restrictions laid down by the authority creating them.

County councils have power to delegate any powers or duties transferred to them by the Local Government Act to a committee of the county council. The council appointing it may from time to time make, vary and revoke regulations respecting the quorum and proceedings of such committee, and as to the area within which it is to exercise its authority. The committee must submit its acts to the county council for approval, but no power of delegating to the committee the power of raising money by rate or loan exists.

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<sup>1</sup> Mayor of Oxford v. Crow, 1893, 3 Ch. 535.

In London the borough councils are empowered to appoint a committee or committees for any purpose which in the discretion of the council would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee (Metropolis Management Act, 1855, section 58), but the council does not deprive itself of the powers delegated to the committee, and may exercise such powers without previously revoking the authority of the committee.

“Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself.”<sup>1</sup>

Every committee so appointed may meet from time to time and may adjourn from place to place as they think proper for carrying into effect the purposes of their appointment, but no business shall be transacted at any meeting of the committee unless three members of the committee are present. Furthermore, every borough council may from time to time make, alter, and repeal byelaws for regulating the business and proceedings of its committees, but a committee cannot delegate its powers to one of its number. What it does must be the joint act of the committee.

<sup>1</sup> *Huth v. Clarke*, 25 Q.B.D. 391, 395; 59 L.J. M.C. 120.

Every committee must report its proceedings to the council, but to the extent to which the council so directs the acts and proceedings of the committee shall not require the council's approval: provided that a committee shall not raise money by loan or by note, or spend any money beyond the sum allowed by the council. (London Government Act, 1899, s. 8 (2).)

The acts of the committee must be such acts as the council themselves could do.<sup>1</sup> Where a committee is required to submit its acts to the council for approval, upon the approval of the council being given, the acts of the committee become valid as from the time when they were done. Thus where a committee, appointed for the purpose (*inter alia*) of executing the Metropolis Management Acts, so far as they relate to the public health of the parish, directed a sanitary inspector to serve notice of a nuisance on premises, and in default to take proceedings, and the committee's acts required to be submitted to the vestry for approval, and after proceedings had been taken, but before the hearing of the summons, the vestry approved, it was held that the notice and issue of the summons was sufficient.<sup>2</sup> A committee, however, must direct an officer in each particular case and cannot empower

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<sup>1</sup> *Cook v. Ward* (1877), 2 C.P.D. 235; 46 L.J. C.P. 554.  
*Barnsley Local Board v. Sedgwick*, L.R. 2 Q.B. 185; 36 L.J. M.C. 65.  
*Eaton v. Barker*, 7 Q.B.D. 529; 56 L.J. Q.B. 414.

<sup>2</sup> *Firth v. Staines* (1897), 2 Q.B. 70; 66 L.J. Q.B. 510.

him generally to make complaints and take proceedings.<sup>1</sup> Both the London Government Act and the Local Government Act being later in date than the Housing Act, reference should be had to these Acts in considering the powers of committees appointed under the Housing Act.

### *Voting.*

No member of a Local Authority or of a committee (section 88 (1)) can vote on any resolution or question which is proposed or arises relative to any dwelling-house, building, or land in which he is beneficially interested. If he does he is liable to a fine not exceeding £50 for each offence, though his vote will not invalidate the proceeding or resolution. The penalty is recoverable summarily (section 88 (2)). The Public Bodies Corrupt Practices Act, 52 & 53 Vict. c. 69, makes corruption in office a misdemeanour punishable with a fine not exceeding five hundred pounds or with imprisonment with or without hard labour for any period not exceeding two years, or to imprisonment and fine with the additional liability of being ordered to pay the amount or value of any gift, loan, fee, or reward received by the offender, and with the further liability of being adjudged incapable of being elected or appointed to any public office for seven

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<sup>1</sup> St. Leonard, Shoreditch v. Holmes, 50 J.P. 132.



years from the date of conviction and forfeiture of any present office.

The offence is defined in wide terms. Section 1 declares that "every person who shall by himself or by or in conjunction with any other person corruptly solicit or receive or agree to receive for himself or for any other person any gift, loan, fee, reward, or advantage whatever as an inducement to or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanour.

"(2.) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanour."

The Attorney- or Solicitor-General's consent is required before a prosecution can be instituted. A

public body is one acting under any Act relating to public health.

Proof of the offence can be given by production of the attendance book, signed by the member, and the minute book.<sup>1</sup>

*Medical Officer's failure to inspect an Unhealthy Area.*

To meet the case of a Medical Officer of Health who fails to inspect or to discover an unhealthy area, provision is made that two or more justices of the peace or twelve or more ratepayers (section 5 (2)) may complain to him, calling his attention to an area they consider unhealthy, and it is then his duty to make an official representation stating the facts of the case, with his opinion. If he still fails to inspect or to make an official representation, or if he reports that the area is not unhealthy, the ratepayers (section 16 (1)), not necessarily the same twelve or more ratepayers in England and Wales,<sup>2</sup> can then appeal to the Home Secretary if the complaint relates to the London area, and outside London to the Local Government Board. In Scotland the appeal lies to the Secretary of State in Scotland, and in Ireland to the Local Government Board. These respective authorities are known as the Confirming Authorities.

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<sup>1</sup> Hunnings v. Williamson, 10 Q.B.D. 459.

<sup>2</sup> Section 4, subsection 2, 3 Edw. 7. c.39. s. 4 $\frac{1}{2}$ (2).

*Transfer of Powers and Duties of Home Office to  
Local Government Board.*

By the Housing Act, 1903, 3 Edward 7. c. 39. section 2, His Majesty may by Order in Council assign to the Local Government Board any powers and duties of the Secretary of State under the Housing Acts or under any scheme made in pursuance of these Acts, and the powers of the Secretary of State under any local Act so far as they relate to the housing of the working classes, and any such powers and duties so assigned shall become powers and duties of the Local Government Board.<sup>1</sup>

*Method of Appeal by Ratepayers.*

The twelve or more ratepayers who are no longer, as far as England and Wales are concerned, required to be the ratepayers who made the complaint to the medical officer, but any twelve ratepayers of the district are required to give security for the costs of their appeal to the Confirming Authority (section 16, subsection 1, and 3 Edward 7. c. 39. section 4 (2)), and when this has been done a legally qualified medical practitioner will inspect the area complained of and report the facts of the case, and whether, in his opinion, the area is unhealthy or not. If he reports

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<sup>1</sup> This section applies only to England and Wales and provides for the transfer of powers to the Local Government Board with a view of ultimately placing the whole business of supervision in the hands of the Local Government Board in London.

the area to be unhealthy, the Confirming Authority will transmit his representation to the Local Authority, who are bound to proceed on it as if it were an official representation. The Confirming Authority may order the Local Authority (section 16, subsection 2) or the ratepayers to pay the costs or part of the costs of this inquiry in their discretion as they may think just.

An order for payment of these costs may be made a rule of the Superior Court and enforced accordingly.<sup>1</sup>

The Local Authority (sections 4 and 16-19) are bound to consider any official representation whether made originally by their Medical Officer of Health, or made by any Medical Officer of Health, or the official representation of a medical practitioner made after a local inquiry<sup>2</sup> transmitted to them by the Confirming Authority, but it is open for them to decline to pass a resolution in favour of any improvement scheme, or they may fail to pass a resolution. The grounds for declining are (1) that

<sup>1</sup> In Scotland the Superior Court means the Court of Session, and where an order, certificate, or other authority under the Housing Act may be made a rule of the Superior Court the Court of Session may, on the application of the Local Authority, or of the Confirming Authority, or on the application of any party interested, interpose their authority to any such order, certificate, or other authority, and grant, or cause to be granted, upon which execution may be enforced, as provided in common form (section 95 (2)).

<sup>2</sup> Offences under this Act punishable on summary conviction may be prosecuted and tried before the sheriff or two justices or in burghs before the magistrates in manner provided by the Summary Jurisdiction (Scotland) Acts, and all necessary jurisdiction is conferred on such sheriff or two or more justices or any magistrate of a burgh.

A court of summary jurisdiction means the sheriff or any two justices or the burgh magistrate or sheriff or any magistrate or magistrates within the meaning of the Summary Jurisdiction Acts.

<sup>3</sup> *Supra*, p. 15.

they are not satisfied (1) that the truth of the official<sup>1</sup> representation, or (2) that their resources are insufficient.

On failure to pass a resolution the Local Authority section 10 are required to transmit as soon as possible a copy of the official representation with their reason for not acting upon it to the Confirming Authority. On the receipt of a copy of the official representation and the Local Authority's reasons for not acting upon it, the Confirming Authority may direct a local inquiry to be held and a report to be made to them with respect to the correctness of the official representation and any matters connected therewith on which they desire information.

If, on the report, the Confirming Authority in England and Wales (3 Edward 7, c. 39, section 4) are satisfied that a scheme ought to have been made for the improvement of the area to which the inquiry relates or of some part of it, they may, if they think fit, order the Local Authority to make either an Improvement or a Reconstruction Scheme, and to do all things necessary<sup>2</sup> under the Housing Acts for carrying the scheme so made into execution. The Local Authority must then make a scheme or direct one to be prepared as if they had passed a resolution to make a scheme,<sup>3</sup> and must do all things

<sup>1</sup> *Supra*, p. 2.

<sup>2</sup> That is under Parts 1 and 2 of the Act.

<sup>3</sup> *Supra*, p. 16.

necessary under the Housing Act for carrying the Scheme into effect.<sup>1</sup>

The order of the Confirming Authority (3 Edward 7, c. 39, section 4) is enforceable by mandamus.

The effect of the Amendment Act<sup>2</sup> in England and Wales is to take away the power of refusing to carry out a scheme where either the Medical Officer has reported as to the unhealthiness of an area or where the Officer of the Confirming Authority, on an appeal by ratepayers, has satisfied himself that an unhealthy area exists. The discretion no longer remains with the Local Authority, but with the Confirming Authority.

In London the County Council (section 72) are directed not to take proceedings on an official representation, which relates to not more than ten houses, though they can direct the Medical Officer of Health who made it to represent the case to the borough council for them to deal with it as a reconstruction scheme (section 72). It will be necessary hereafter to point out that provision is made for determining whether a scheme should be carried out by a county council under Part I, or a borough council under Part II, in certain cases.<sup>3</sup>

### *Statutory Requirements of an Improvement Scheme.*

The statutory requirements of every improvement scheme (section 6, 1, 2, 3) are that it must be accompanied by maps, particulars, and estimates.

<sup>1</sup> *Id.*, pp. 18-20.

<sup>3</sup> 3 Edward 7, c. 39.

<sup>2</sup> *Infra*, p. 118.

(a) It may exclude any part of the area in respect of which an official representation is made, or may include neighbouring lands when the Local Authority thinks such exclusion is expedient or inclusion necessary for making the scheme efficient for sanitary purposes. Such lands, although not within the unhealthy area, may be acquired compulsorily, but on the map which must accompany the scheme they must be distinguished, as compensation is awarded on a different scale to the owners.

(b) It may provide for widening existing approaches to the unhealthy area or otherwise for opening them out for the purposes of ventilation or health.

(c) It may provide for the scheme or any part of it being carried out by the person entitled to the first estate of freehold in any property comprised in the scheme; in Scotland the "owner," or with the concurrence of such person under the superintendence and control of the Local Authority and upon such terms as may be agreed upon between the Local Authority and such person. A person entitled to the first estate of freehold might be a tenant for life, or any person having a freehold estate less than the fee simple.

(d) It must provide for proper sanitary arrangements and

(e) Must provide dwelling accommodation<sup>1</sup> for any of the working classes<sup>2</sup> displaced by the scheme.

But in the County and City of London (section 11 (1)), the working classes dishoused are required to be rehoused within the limits of the same area or its vicinity. The rehousing must be in suitable dwellings. The Confirming Authority may dispense with the stringency of this provision on an application for a provisional order.

Outside London (section 11 (2)) a scheme shall, if the Confirming Authority so require (but it is not otherwise obligatory on the Local Authority so to frame their scheme), provide for the accommodation of such persons of the working classes displaced in the area with respect to which the scheme is proposed in suitable dwellings either within or without the area as the Confirming Authority, on a report made by the officer conducting the local inquiry, may require.<sup>3</sup>

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<sup>1</sup> Under the schedule to the Housing of the Working Classes Act, 3 Edward 7, c. 39, the expression working class includes mechanics, artisans, labourers and others working for wages; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them.

<sup>2</sup> Lands may be purchased by agreement or compulsorily for this purpose, p. 55.

Appropriated, p. 53.

Obtained under Part III, chap. 3, p. 180.

Under the Municipal Corporations Act, p. 54; also, chapter 3 should be studied as to the various powers of Local Authorities.

<sup>3</sup> The Local Government Board must hold an inquiry in cases where ten or more houses of members of the working class are taken. (House of Commons Standing Order 184; House of Lords Standing Order 111), *infra* p. 216.



The rehousing of the working classes may take place under Part I. by Local Authorities, or under Part I. in conjunction with Part III. when Part III. has been adopted.<sup>1</sup>

The provisions relative to the housing of the working classes under Part I. will be dealt with later on (p. 48).

Under Part I., in conjunction with Part III. (Chapter III., *infra*), provision may be made for working-class accommodation by Local Authorities inside their district. Local Authorities being councils other than rural district councils may establish and acquire them outside their district (63 & 64 Vict. c. 59. s. 1), and lands or houses may be purchased. The subject is dealt with fully in Chapter III., Lands or houses may be acquired compulsorily<sup>2</sup> or by agreement.<sup>3</sup> The question when this is permissible will be found discussed in Chapter III. The title, it should be noticed, given to Part III., Working Class Lodging Houses, is misleading, since "lodging houses" include separate houses or cottages for the working classes whether containing one or several tenements, and the purposes of Part III. include the provision of such houses or tenements.

<sup>1</sup> P. 184. Chapter III.

<sup>2</sup> P. 195.

<sup>3</sup> See as powers of Local Authorities as to acquisition and leasing of houses and land under Part III., p. 196; erection of and conversion and alteration of buildings, p. 195. Borrowing powers, p. 206.

In London (section 11 (a)), when the Local Government Board holds an inquiry as to the working classes dishoused by any scheme, the Local Authority may show either that they or that some other person or body of persons have provided or are about to provide the required accommodation for the working classes dishoused. This accommodation must be equally convenient, but need not be within the area of the scheme nor within its immediate vicinity.

The following bodies have statutory power under the Act to provide working-class accommodation (section 67 (1) (a)): railway, dock, and harbour companies,<sup>1</sup> companies or associations established for the purpose of constructing, or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, or for trading or manufacturing purposes (in the course of whose business, or in the discharge of whose duties persons of the working classes are employed,<sup>2</sup> all these may purchase, take, and hold land (section 67 (3)). If the body should not be body corporate, it shall, for the purpose of holding land and of suing and being sued in respect thereof, be deemed a body corporate

<sup>1</sup> It would seem that railway, dock, or harbour companies, looking at section 68, can only use these powers for the benefit of their own working-class employees.

<sup>2</sup> Bodies formed for trading or manufacturing purposes would be in the same category as railway, dock, or harbour companies.

with perpetual succession, for the purposes of Part III. of the Act.

Notwithstanding any Act or charter or rule of law or equity to the contrary, the above-mentioned bodies are authorised to erect working-class dwellings, for all or any of their workpeople.<sup>1</sup> They are entitled to purchase and hold land for this purpose, and to pay for it out of funds at their disposal. The erection of dwellings may take place either on their own land or on any lands. The Housing Act authorises them to purchase and hold. Although powers of holding land are expressly given, corporations would be prohibited from holding land by reason of the Mortmain and Charitable Uses Act, 1888,<sup>2</sup> section 1. The Act, however, of 1890<sup>3</sup> expressly permits them. This is referred to later on.<sup>4</sup> With reference to the obligation of railway companies and others taking land reference must be paid to Chapter IV. (*infra*, p. 212).

Where a railway company builds cottages for employees, it is bound to conform to all byelaws of the Local Authority; the proviso that section 157 of the Public Health Act, 1875, shall not apply to buildings belonging to railway companies, and used for the purpose of such railway does not apply, since cottages so built are not used for the

<sup>1</sup> *Supra*, p. 208.

<sup>2</sup> 51 & 52 Vict. c. 42.

<sup>3</sup> 53 & 54 Vict. c. 16.

<sup>4</sup> P. 52.

purposes of such railway within the meaning of the proviso.<sup>1</sup>

All the bodies above mentioned are entitled to borrow money from the Public Works Loans Commissioners (section 67 (1)), so is a private person entitled to any land for an estate in fee simple (section 67 1 (*b*)), or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired.

Loans are made under the Public Works Loans Act, 1875 (section 67 (2)), and the regulations made pursuant thereto. They are subject to the following provisions :—

(a.) Any advance may be made whether the body or proprietor receiving it has or has not power to borrow on mortgage or otherwise independently of the Housing Act, but nothing in the Housing Act shall repeal or alter any regulations, statutes, or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken up, or paid up.

(b.) The period for repayment of the sums advanced shall not exceed forty years.

<sup>1</sup> *Manchester, Sheffield, and Lincolnshire Railway Company v. Barnsley Union*, 56 J.P. 679 ; 67 L.T. (N.S.) 119.

With reference to section 13 (5) of the London Building Act of 1891, 57 & 58 Vict. c. cxxiii., dealing with a building exemption where the dwelling-house is to be inhabited or adapted to be inhabited by persons of the working class, *see* *London County Council v. Davis*; *London County Council v. Rowton House Company*, 77 L.T. (N.S.) 693.

- (c.) No money shall be advanced on mortgage of any land or dwelling solely, unless the mortgage proposed is an estate in fee simple, or estate for a term of years absolute whereof not less than fifty years shall remain unexpired at the date of the advance.
- (d.) The money advanced shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loans Commissioners. Advances may be made by instalments, as the buildings progress, secured by mortgage. The advances must not exceed one moiety of the value of the buildings.

The minimum rate of interest is  $2\frac{3}{4}$  per cent.<sup>1</sup>

Lodging-houses<sup>2</sup> established under these provisions (section 70), that is by railway and other companies and by private persons,<sup>3</sup> are subject to the inspection of the Local Authority or any officer authorised by the Authority.<sup>4</sup>

Any power of the Local Authority under the Housing Acts (3 Edw. 7. c. 39, section 11 (1)), or under any scheme<sup>5</sup> for providing dwelling accommo-

<sup>1</sup> Public Works Loans Act, 1897 (60 & 61 Vict. c. 51).

<sup>2</sup> *Supra*, p. 21, as to definition of lodging-house.

<sup>3</sup> *Supra*, p. 22.

<sup>4</sup> *Infra*, p. 202, as to penalties and application of fines, p. 201.

<sup>5</sup> An improvement or a reconstruction scheme.

dation or lodging-houses, shall include a power to provide and maintain with the consent of the Local Government Board,<sup>1</sup> and if desired, jointly with any other person in connection with any such dwelling accommodation or lodging houses, any building adapted for use as a shop, any recreation grounds or other buildings or lands, which, in the opinion of the Local Government Board, will serve a beneficial purpose in connection with the requirements of the persons for whom the dwelling accommodation or lodging-houses are provided, and to raise money for the purpose, if necessary, by borrowing. In giving their consent the Local Government Board (3 Edw. 7. c. 39, section 11 (2) may, by order, apply, with any necessary modifications, to such land or building any statutory provisions which would have been applicable thereto, if the land or building had been provided under any enactment giving any Local Authority powers for this purpose.

### *Completion of Scheme.*

When the Local Authority (section 7 (a) 3 Edw. 7. c. 39, section 5 (1)) have completed their scheme they must publish during three consecutive weeks in some one and the same newspaper circulating within the district an advertisement. In Scotland and Ireland

<sup>1</sup> These powers are exercised by the Home Secretary in London until a transfer of powers takes place to the Local Government Board, 3 Edw. 7. c. 39, section 16.

the old procedure still appears to exist.<sup>1</sup> The advertisement must contain (a) a notice of the fact of a scheme having been made and the limits of the area comprised therein; (b) a place must be named within the area or in its vicinity where a copy of the scheme may be seen at all reasonable times and during the thirty days next following the date of the last publication of the advertisement.<sup>2</sup> The Local Authority (section 7 (b) 3 Edw. 7, c. 39, s. 5 (1)) must serve a notice on every owner or reputed owner, lessee or reputed lessee and occupier of any lands proposed to be compulsorily taken so far as such persons can reasonably be ascertained, stating that such lands are proposed to be compulsorily taken for the scheme and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person served dissents or not in respect of the taking of his land. It is not necessary to require an answer of occupiers.

This notice (section 86 (2)) need not be under seal, but it must be signed by the clerk or his lawful deputy.

Although by section 93 of the Act, unless the context otherwise requires, the expression land includes any right over land, it is not necessary to

<sup>1</sup> As the Amendment Act applies only to England and Wales, it seems that in Scotland and Ireland the publication of the advertisement must be in the months of September, October, and November.

<sup>2</sup> In Scotland and Ireland the notice must be served in the month next following the month in which the advertisement is published.

serve notices on owners of rights of easements over lands proposed to be compulsorily taken, since the loss of such rights of easements would be a matter for compensation and not for objection to the scheme. Thus, under the old Acts, it was decided that an injunction would not be granted for loss of ancient lights. The complainant must seek his remedy in compensation.<sup>1</sup>

### *Service of Notices.*

Service must be effected personally on the person (section 7 (c) (1)) required to be served, or, if he is absent abroad or cannot be found, on his agent. If no agent can be found service may be effected by leaving the notice on the premises (section 7 (c) (2)), or, as an alternative, the notice can be served by leaving it at the usual or last known place of abode of the person to be served, or it may be addressed through the post (section 7 (c) (3)) to his usual or last known place of abode.

One notice (section 7 (d)) addressed to the occupier or occupiers, without naming him or them, and left at any house, is deemed to be a notice served on the occupier or on all the occupiers of a house.

Service by post is deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is

<sup>1</sup> *Padellaro v. Morris*, 45 L.T. (N.S.) 579.

*Swainston v. Finn and Metropolitan Board of Works*, 43 L.T. (N.S.) 634.



proved is deemed to have been effected at the time when the letter would be delivered in the ordinary course of post (52 & 53 Vict. c. 63. s. 26); prepayment must be proved or the service will be insufficient.<sup>1</sup>

The Confirming Authorities (section 27) are empowered to prescribe forms of advertisement and notices under Part I. of the Act, though it is not obligatory to use them; nevertheless, when they are adopted, they are deemed sufficient. Forms of advertisements and notices have been issued by the Home Secretary and by the Local Government Board and will be found in the Appendix.<sup>2</sup> Notices, summons, writs, or other proceedings at law (section 87), or otherwise, required to be served on a local authority in relation to carrying into effect the object or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk or leaving the same at his office with some person employed there. In England and Wales (3 Edward 7. c. 39. section 13 (2)), any document referred to above is deemed sufficiently served upon the local authority if addressed to that authority or their clerk at the office of that authority, and sent by post in a registered letter.<sup>3</sup>

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<sup>1</sup> *Walthamstow Urban District Council v. Henwood*, 1897, 1 Ch. 41; 66 L.J., Ch. 31; 75 L.T. (N.S.), 375.

<sup>2</sup> P. 359.

<sup>3</sup> *Walthamstow Local Board v. Henwood*, 1897, 1 Ch. 41; 66 L.J., Ch. 31; 75 L.T. (N.S.), 375.

°. The Local Government Board have issued instructions to the councils of urban districts in respect of schemes. As these may possibly vary from year to year, a copy should be applied for by intending petitioners.<sup>1</sup>

The Home Office have not issued instructions.

### *The Effect of the Notice.*

With reference to the effect of these notices it should be noted that under a similar proviso in section 176 of the Public Health Act of 1875, it has been decided that the giving of notices did not bind the Local Authority to proceed to purchase lands even though they had obtained subsequently a Provisional Order, which had been confirmed by Act of Parliament;<sup>2</sup> but where a notice had been given and subsequently followed by the assessment of damages by the jury, a parliamentary contract was assumed, and an order for specific performance granted.<sup>3</sup> But under the Housing Acts, the Local Authority having once resolved to carry a scheme into effect, or being ordered to do so by the Confirming Authority, must proceed with the scheme<sup>4</sup> (3 Edward 7. c. 39. section 4), and although they may modify it under

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<sup>1</sup> See Appendix II.

<sup>2</sup> *Burgess v. The Bristol Sanitary Authority*, 50 J.P., 455; but see *Birch v. The Vestry of St. Marylebone*, 20 L.T. (N.S.), 697.

<sup>3</sup> *Burr v. The Wimbledon Local Board*, 56 L.T. (N.S.), 329.

See also *Rolls v. London School Board*, 27 Ch. D. 639; 51 L.T. (N.S.), 567.

<sup>4</sup> Section 12 (1). 3 Edward 7. c. 39, applies to England and Wales only.

certain conditions,<sup>1</sup> the question whether an owner would have any redress, if the modified scheme excluded his property, is doubtful. According to an earlier case<sup>2</sup> than that of *Burgess v. The Bristol Sanitary Authority*,<sup>3</sup> it would seem that the owner who has been served with a notice to treat is in the position as a vendor when everything is settled but the purchase price; if so, he would have a right to compel the Local Authority to purchase his property. Until the Provisional Order is confirmed by Act of Parliament<sup>4</sup> persons interested therein retain all their legal right *inter se*.

### *Confirming Order.*

When the necessary provisions as to advertisements and service are complied with, the Local Authority (section 8) can present their petition to the Confirming Authority praying that an order may be made, which must be under seal; and if it is desired that in the event of any order which may be issued becoming provisional, such order should be confirmed during the Session of 1904, the petition must be presented not later than the 17th of December. It is, however, very desirable that in such cases the petition should be presented at an

<sup>1</sup> Section 15. *See infra*, p. 44.

<sup>2</sup> *Birch v. The Vestry of St. Marylebone*, 20 L.T. (N.S.), 697.

<sup>3</sup> *Dye v. Patman*, 46 W.R. 206.

<sup>4</sup> *Infra*, p. 43.

earlier date so as to prevent the possible loss of a Parliamentary Session in the event of errors being discovered too late to be remedied. The Local Government Board requires that the petition should be accompanied by the following documents :—

- (a) A copy of the official representation.
- (b) Two copies of the improvement scheme.
- (c) Two copies of the estimate of the cost of carrying the scheme into effect.
- (d) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working class who will be displaced, and the number for whom and the place or places at which dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reasons for this course must be stated and the distance by the nearest public thoroughfare from that area must be given. The particulars should also show, as far as practicable, in what way the area included in the scheme and the place or places at which dwelling accommodation for the working class is to be provided may be dealt with so as to carry out the purposes of the Acts and the proposed scheme.

(e) Particulars should also be given showing by reference to the numbers of the properties on the maps (1) the area included in the official representation; (2) any lands (*a*) excluded from such area by the Local Authority, or (*b*) included in it by the Local Authority under section 6 (1) (*a*) of the Act, and the reasons for such exclusion or inclusion; (3) any lands included for widening existing approaches to the unhealthy areas, or otherwise for opening out the same for purposes of ventilation or health under section 6 (1) (*b*); and (4) the lands proposed to be taken compulsorily.

(f) Maps showing (1) the area included in the official representation, and (2) the area included in the improvement scheme (which maps are hereinafter referred to as the deposited maps); (3) any site where dwelling accommodation is to be provided which is not within the area included in the improvement scheme; and (4) the position of each site in relation to the area included in the scheme, and a book of reference to the deposited Acts in duplicate. The several properties should be numbered consecutively on the deposited map. Each

parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundary being defined by a hard line, and the buildings (if any) on each parcel being linked into it so that it may be seen to what properties each number applies. The book of reference should be prepared on the ground at the same time as and in conjunction with the deposited maps, each parcel of land being numbered to correspond with the deposited maps, and being described so as to show clearly what properties are covered by each number.

- (g) A statutory declaration, specifying in which of the modes mentioned in section 7 of the Act the notices have been served, and the names of the persons so served. This declaration should be made by the person who served the notices.
- (h) A statutory declaration made by the clerk of the Local Authority, showing that all the other requirements of section 7 of the Act of 1890 as amended by section 5 (1) of the Act of 1903 have been complied with, and that the petition states the names of the owners or reputed owners and lessees or reputed lessees who have dissented

in respect of the taking of their lands. Copies of the newspapers containing the advertisements and also of the form of notice served on the owners, lessees, and occupiers should be annexed to the declaration as exhibits.

Standing Orders 38 and 39 of both Houses of Parliament, extracts from which are appended, must be complied with, and in carrying out the provisions of the former Standing Order each house to be taken should be indicated by reference to its number on the deposited maps (*other numbers should not be adopted*), (*a*) in the statement, and (*b*) in the copy of the deposited map referred to in the Standing Order. The houses to be taken should be shown by a distinctive colour on the copy of the maps, and the number of persons of the labouring class resident in each house should also appear in the statement.

6. The Board should immediately after the last of the deposits required by the Standing Orders has been made, be furnished with an affidavit for production to the Examiners of Standing Orders in proof that the requirements of the Standing Orders referred to have been complied with. These Orders are given in Chapter IV. (page 214, *infra*). This affidavit must state definitely that the plans, sections, books of reference, or maps deposited at the

Private Bill Office, and at the office of the clerk of the Parliaments respectively, in compliance with Standing Orders 39 above referred to, are in accordance with these Orders, duplicates of these deposited with the Board.

7. Every statutory declaration and allidavit must be made or sworn before a justice of the peace, or a commissioner for oaths, and must be stamped with a half-crown impressed stamp; and each exhibit to a statutory declaration or allidavit must be marked by the declarant or deponent and by the Justice of the Peace or the Commissioner for Oaths, as the case may be, in the usual way.

N.B. — It is particularly requested that the petitions, declaration, allidavit, notices, and other documents may be on foolscap paper of the usual size, and that whenever more than two copies of any of these documents are required for use such documents may be printed so as to facilitate examination.

S. B. PROVIS,  
*Secretary.*

Local Government Board,  
Whitehall, September 1903.

*Failure to prove Publication of Advertisements and  
Service of the proper Notices.*

A failure to prove the publication (section 28) of the prescribed advertisements and service of the



proper notices will not necessarily prove fatal to a consideration of the scheme, since, if reasonable cause is shown to the Confirming Authorities' satisfaction why these should be dispensed with they can be dispensed with unconditionally or conditionally on the publication of other notices, due care being taken to prevent the interest of any person being prejudiced by the fact that the publication of any advertisement or the service of any notice is dispensed with.

In the ordinary course when the petition has been considered and the publication (section 8 (3)) of the proper advertisements and service of the proper notices proved, if the Confirming Authority think fit to proceed with the case, they direct the holding of a local inquiry in or in the vicinity of the area.

### *Local Inquiry.<sup>1</sup>*

This inquiry is of an important character (section 17). Prior to holding it the officer in his discretion advertises or informs persons residing in the area of his intention, and states the time and place where he will hear all persons desirous of being heard on the subject of the inquiry.

<sup>1</sup> Local inquiries in England and Wales outside London and in London in certain specified cases are held at the instance of the Local Government Board. In Scotland they are held by the direction of the Local Government Board for Scotland (in Scotland the Board of Supervision no longer exists), and by the secretary of State for Scotland. In Ireland at the instance of the Local Government Board for Ireland.

The following matters will be considered :—

- (1.) The correctness of the official representation made as to the area being an unhealthy one.
- (2.) The sufficiency of the scheme provided for its improvement.
- (3.) Local objections to the scheme.
- (4.) Any other matters into which he is directed by the Act or the Confirming Authority to inquire for the purposes of the Act.
- (5.) Any application made for a dispensation (section 11 (*b*)) from the obligation of providing for working-class accommodation in London within the limits of the area or its vicinity. In the country, what provision is made for persons dis-housed when there are more than ten houses in number belonging to the working classes proposed to be taken.

### *Dispensation.*

The grounds for a dispensation in London are (section 11 (*a*)) :—

- (1.) That equally convenient accommodation has been or can be forthwith provided at some place other than within the area or its immediate vicinity by the Local Authority ;

- (2.) Or that some other person or body of persons have already or are about to forthwith provide it. The requirements of the section are deemed to be complied with to the extent to which accommodation is so provided. Whether equally convenient accommodation elsewhere than in the unhealthy area or its vicinity is provided will depend upon the proximity of the accommodation provided or proposed to be provided to the place or places where the working classes find employment. The Confirming Authority are the sole judges.<sup>1</sup>

When the Local Authority apply for a dispensation, if the officer of the Confirming Authority (section 11 (1) (b) reports that it is expedient, having regard to the special circumstances of the locality and the number of artisans and others belonging to the working classes dwelling within the area and being employed within a mile thereof, that a modification should be made, the Confirming Authority, without prejudice to any other powers conferred by the Act, may in the Provisional Order dispense altogether with this obligation of the Local Authority to provide for the accommodation of the persons of the working class who may be displaced by the scheme to such

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<sup>1</sup> The London County Council and the Local Authorities in urban districts can provide land outside their area when Part III. is adopted (*infra*, Chapter III.).

an extent as the Confirming Authority may think expedient, having regard to the special circumstances mentioned, but not exceeding one-half of the persons displaced.

The officer on the inquiry (section 19) will hear witnesses and has power to administer oaths.

The cost of the inquiry falls on the Local Authority, and persons concerned in such inquiry or on such of them in such proportions as the Local Government Board (section 85) or the Confirming Authority may direct. The costs include the salary or remuneration of any inspector or officer or person employed by the Local Government Board or Confirming Authority,<sup>1</sup> whose remuneration must not exceed three guineas a day. The Local Government Board or the Confirming Authority, as the case may be, certifies the amount of the costs incurred. Costs certified and directed to be paid by any Local Authority or person become a Crown debt due from such Local Authority or person.<sup>2</sup>

For the purpose of the execution of their duties the Local Government Board may cause such local inquiries to be held as the Board sees fit, and sections 293 to 296 and section 298 of the Public Health Act (section 85 (2)) apply for the purpose of

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<sup>1</sup> See p. 14.

<sup>2</sup> Local inquiries may be held by the Local Government Board or other Confirming Authority under sections 8, 31, 39, 57, and 73 of the Act.

any order made by the Local Government Board or any local inquiry which that Board causes to be held in pursuance of any part of the Act.<sup>1</sup>

*Provisional Order.*

After considering their officer's report made on the inquiry,<sup>2</sup> the Confirming Authority (section 8) may make a Provisional Order declaring the limits of the area comprised in the scheme and authorising its execution. The order may be made absolutely or with such modifications as the Confirming Authority think fit, but no addition to the lands proposed to be compulsorily taken in the scheme can be made.

<sup>1</sup> These sections are as follows :—

The Local Government Board (section 293) may from time to time cause to be made such inquiries as are directed by this Act and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

The Local Government Board (section 294) may make orders as to the costs of inquiries or proceedings instituted by or of appeals to the said Board under this Act, and as the parties by whom or the rates out of which such costs shall be borne, and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

All orders made by the Local Government Board (section 295) in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as the Board may direct.

Inspectors of the Local Government Board (section 296) shall for the purposes of any inquiry directed by the Board have as relation to witnesses and their examination the production of papers and accounts and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

The reasonable costs of any Local Authority (section 298) in respect of Provisional Orders made in pursuance of this Act, and of the inquiry preliminary thereto as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for the purposes of this Act by the Local Authority interested or affected by such Provisional Orders, and such costs shall be paid accordingly, and, if thought expedient by the Local Government Board, the Local Authority may contract a loan for the purpose of defraying such costs.

<sup>2</sup> *Supra* 37.

These modifications, as a rule, relate to the accommodation of the working classes dis housed, and to the exclusion or inclusion of lands by agreement.

The Local Authority on confirmation of the scheme must serve a copy of the Provisional Order (section 5) on any person whose lands are proposed to be compulsorily taken in the same way as the original notices were served,<sup>1</sup> except on tenants for a month or a less period than a month, where a notice is unnecessary.

The following special provisions apply to England and Wales :—

Where it is not proposed to take land compulsorily (3 Edward 7. c. 39. s. 5 (2) (a)), or where although land is proposed to be taken compulsorily the Confirming Authority before making the order are satisfied that notice of the draft order has been served as required as respects a Provisional Order,<sup>2</sup> and also that the draft order has been published in the London Gazette, and that a petition against the draft order has not been presented to the Confirming Authority by any owner of land proposed to be taken compulsorily within two months after the date of the publication and the service of notice, or having been so presented has been withdrawn. The Provisional Order (3 Edward 7. c. 39. section 5 (3))

<sup>1</sup> *Supra*, p. 28.

<sup>2</sup> *Supra*, p. 41.

takes effect without confirmation by Parliament. The order so made has the same effect as the confirmation of the order by Act of Parliament.

References to a Provisional Order include references to an order, which takes effect without an Act of Parliament under subsection 5 of section 8 of the Housing Act of 1890.

A Provisional Order (section 8 (6)) otherwise than one made as just stated, has no validity until confirmed by Act of Parliament. The Confirming Authority where confirmation is necessary, obtains confirmation by an Act of Parliament. With such modifications as Parliament chooses to make, the Act becomes a Public General Act of Parliament.

The Confirming Authority has power to make an order in favour of any person whose lands were proposed to be compulsorily taken, allowing him his reasonable costs of opposing a scheme, presumably, the costs of an opposition at a local inquiry.

All costs, charges, and expenses (section 8 (8)), incurred by the Confirming Authority relative to a Provisional Order, to the amount that they direct, and all costs, charges, and expenses allowed by the Confirming Authority are deemed expenses incurred by the Local Authority, payable to the Confirming Authority, and to the person to whom they are allowed in such manner and in such times, either in one sum or by instalments, as the Confirming Authority orders. The

Confirming Authority can direct payment of interest at the rate of five per cent. on any sum due.

Any order made by a Confirming Authority (section 8 (8)) on the making the confirmation of a Provisional Order, may be made a rule of the superior court and enforced.

*Costs of Opposition to Bill for Confirmation of  
Provisional Order.*

If a Bill for confirmation (section 9 (1)) of a Provisional Order is referred to a Committee of either House of Parliament on the Petition of any person opposing the Bill, the Committee are empowered to consider the circumstances under which the opposition was made to the Bill, and whether such circumstances justified it. They can award costs to be paid to the Promoters or opponents of the Bill as they may think just.

The decision of the majority of the Committee (section 9 (3)) for the time being present and voting on this question will be considered as the decision of the Committee.

Costs (section 9 (2)) are taxed under 28 & 29 Vict. c. 27.

*Modification of Scheme.*

When the Provisional Order has been confirmed by Act of Parliament, its terms may be modified by the Confirming Authority (section 15 (1)).



The modification is made on the Local Authority's application, who are required to satisfy the Confirming Authority that an improvement can be made in the details of a scheme; but where the suggested modification affects any part of the scheme respecting the provision of working-class dwelling accommodation it must be a modification that might have been inserted in the original scheme. Apart from this provision, any part of a scheme which it may be inexpedient to carry into execution, may be modified, but the Confirming Authority (section 15 (2)) are requested to lay a statement of any modifications allowed by them before both Houses of Parliament, as soon as practicable after they have allowed them. If Parliament is not sitting, the statement must be laid before both Houses within one month after the next meeting of Parliament.

A scheme modified in this way is also required to be confirmed by Act of Parliament (section 15 (2)):

- (1) Where the modification requires a larger public expenditure than that sanctioned by the former scheme;
- (2) Where property is required to be taken otherwise than by agreement, or property is injuriously affected in a manner different to that proposed, in the former scheme, without the consent of the owner or occupier.

But in England and Wales (3 Edward 7. c. 39. section 3 (1)) the Confirming Authority, or the Local

Government Board, as the case may be, when a Provisional Order, which, if no petition were presented, would take effect without confirmation by Parliament, is petitioned against, may, if they think fit, on the application of the Local Authority, make any modifications in the scheme to which the order relates, for the purpose of meeting a petitioner's objections, and withdraw the order sanctioning the original scheme, substituting for it an order sanctioning the modified scheme.

The same procedure must be followed (3 Edward 7, c. 39, section 3 (2)), that is as to the publication and giving notices, and the same provisions shall apply as to the presentation of petitions, and the effect of the order as in the case of the order sanctioning the original scheme.

No petition shall be received or have any effect, except one which was presented against the original order, or one which is concerned solely with the modifications made in the scheme as sanctioned by the new order.

### *Powers of Local Authorities.*

Apart from the powers which Local Authorities possess when they have adopted Part III. (*infra*, Chapter III.), Local Authorities, under Part I., after acquiring the land comprised in their scheme (section 12 (3)), may take down all or any of the

buildings in the area and clear the area or any part of it, lay out and form, pave, sewer, and complete all streets. Streets laid out and completed become public streets, repairable by the same authority as other streets in the district. In urban districts these will be repairable by the urban authority.<sup>1</sup> Local Authorities may, however, if they choose, let or sell all or any part of the area to any purchasers or lessees (section 12 (2)), for the purpose and under the conditions that such purchasers or lessees will carry the scheme into execution. They may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon, as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and addition to or alteration of the character of the buildings, without their consent, and for the re-vesting of the land in them, and power of re-entry on the breach of any provisions in the grant or lease. Such covenants may be specifically enforced, provided that the work undertaken to be done is sufficiently defined, and that the party seeking enforcement has a substantial interest in its execution which cannot be adequately compensated in damages, and that the contract has given the party sought to be charged possession of the land.<sup>2</sup>

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<sup>1</sup> Public Health, 1875, section 149.

<sup>2</sup> *Wolverhampton Corporation v. Emmons*, 70 L.J., K.B. 429.

The Local Authority (section 12 (3)) may also engage with any body of trustees, society, or person to carry out the whole or any part of a scheme on such terms as they may deem advisable, but they must not rebuild or execute any part of the scheme themselves<sup>1</sup> without the express consent of the Confirming Authority.

In grants or leases of any part of the area appropriated for the erection of working-class dwellings that is under a scheme, the Local Authority (section 12 (4)) must impose suitable conditions and restrictions as to elevation, size, and design of the houses, and the extent of the accommodation to be afforded, and make due provision for the maintenance of sanitary arrangements.

*Dwellings erected out of Funds provided under  
Part I.*

Where the Local Authority (section 12 (5)) erects dwellings out of funds to be provided under Part I. of the Act,<sup>2</sup> they must sell and dispose of all such dwellings within ten years from the time of their completion, unless the Confirming Authority determine otherwise.

The Local Authority (section 12 (6)) may themselves, without acquiring the land, or after or subject to acquiring any part of it, contract with the

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<sup>1</sup> They are entitled to clear the area or to contract for that purpose.

<sup>2</sup> *Infra*, p. 101.

person entitled to the first estate of freehold in any land, comprised in an improvement scheme, or the "owner" in Scotland, for the carrying of the scheme into effect by him in respect of such land. As an owner of a first estate of freehold may merely have a life estate, in a case where the contract is made with him, a scheme would have to provide either for the purchase of the reversionary interest by the owner of the life estate or the Local Authority.

If five years after the removal of buildings on the land set aside by the Confirming Act (s. 13) for the erection of working men's dwellings, the local authority have failed to sell or let the land for the purposes provided by the scheme or failed to make arrangements for the letting of the dwellings, the Confirming Authority may order the land to be sold by public auction or public tender, with power to fix a reserve price subject to the conditions imposed by the scheme or any modifications allowed by the Confirming Authority, subject to a special condition on the part of the purchaser to erect upon the land dwellings for the working classes in accordance with plans to be approved by the Local Authority and subject to such other reservations and regulations as the Confirming Authority may deem necessary.

#### *Acquisition of Lands.*

When the Confirming Act authorising the Improvement scheme has become law the Local

Authority must take steps to purchase the lands and otherwise proceed to execute the scheme as speedily as possible. Section 12 (1).

They may appropriate lands or purchase lands under their compulsory powers or by agreement and for this purpose in dealing with vendors beneficial modifications of the existing law have been sanctioned.

Under the Settled Land Act, 1882, section 3, a tenant for life could sell or exchange any settled land, but the sale was required to be at the best price that could be reasonably obtained, and every exchange for the best consideration in land or in land or money that could be reasonably obtained. A tenant for life could also make building leases for ninety-nine years, reserving the best rent that could be reasonably obtained, regard being had to any fine taken and to any money laid out or to be laid out for the benefit of the settled land and generally to the circumstances of the case.

But the Settled Land Act of 1882 has been amended as follows. Section 74 (a) of the Housing Act provides that—

“Any sale, exchange or lease of land in pursuance of the said Act when made for the purpose of the erection on such land of dwellings for the working classes may be made at such price or for such consideration, or for such rent as, having regard to the said purpose and to all the circumstances of the case, is the best that can be reasonably obtained notwithstanding that a higher price, consideration or rent might have

been obtained if the land were sold, exchanged or leased for another purpose."

Section 21 of the Settled Land Act provides that capital money accruing under that Act may be applied for any improvement authorised by that Act, and by section 25 the erection of cottages for farm labourers, farm servants, and artizans employed on the settled land or not, was an authorised improvement.<sup>1</sup>

The Housing Act, section 74 (b), provides that:—

"The improvements on which capital money may be expended, enumerated in section 25 of the Settled Land Act and referred to in section 30, in addition to cottages for labourers, farm servants and artizans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which, in the opinion of the Court, is not injurious to the estate."

An application, however, is required to be made to the Court where a tenant for life proposes to avail himself of these powers under the Housing Act. An application has been refused to expend capital moneys on an improvement scheme under section 6 (3).

### *Corporate Bodies.*

All corporate bodies, not merely corporations, holding land are authorised (section 74 (2)) to sell, exchange, or lease land for the erection of working-class dwellings at such price, or for such considera-

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<sup>1</sup> *Re Somers Settled Estates*, *Times*, March 23rd, 1899.

tion, or for such rent as, having regard to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose. Corporations had always been able to sell land under the Lands Clauses Act, but they could not sell for less than an amount ascertained by the valuation of two surveyors, but now not only they but any body corporate can sell, and the valuation is made of the land on the basis of its proposed user for working-class dwellings.

Under the provisions of the Working Classes Dwellings Acts of 1890,<sup>1</sup> Parts I. and II. of the Mortmain and Charitable Uses Act of 1888, and section 16 of the 7 & 8 Vict. c. 97, do not apply to assurances by deed or will of land or of personal estate to be laid out in land for the purpose of providing dwellings for the working classes in any populous place.

But the quantity of land assured by will must not exceed five acres, and the deed or will containing the assurance must, within six months in the case of a deed after its execution, or in the case of a will after the probate be enrolled in the books of the Charity Commissioners if the land is situate in England or

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<sup>1</sup> 53 & 54 Vict. c. 16.



Wales, and the deed containing the assurance must within six months after the execution thereof be registered in the office for registering deeds in the city of Dublin, if the land is situate in Ireland. A populous place means the Administrative County of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character.

In construing this Act expressions used in the Act have the same meaning as in the Mortmain and Charitable Uses Act.

#### *Appropriation of Lands.*

For the purpose of providing suitable accommodation for the working classes Local Authorities are empowered by section 23 either to appropriate suitable lands of their own for rehousing purposes, or to purchase by agreement such public lands as may be convenient. Where Part III. of the Housing Act has been adopted by the Amendment Act of 1900, 63 & 64 Vict. c. 59. s. 4, Councils may acquire lands outside their area under Part III. and appropriate them for the purposes of housing persons displaced by a scheme.

This amendment of the Act was adopted by reason of the doubt that arose whether the London County Council were legally able under the Act of 1890 to provide housing accommodation outside their area.

Under section 111 of the Municipal Corporations Act, when municipal corporations determine to convert corporate land into sites for working men's dwellings and obtain the approval of the Local Government Board, they may make grants or leases for terms of 999 years or for any shorter term of any parts of the corporate land. The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land at an expense not exceeding such sum as the Local Government Board approve.

The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building and prohibiting the division of the site or building, and any addition to or alteration of its character, without the consent of the corporation, a proviso for re-entry on breach of any provision in the grant or lease may also be inserted.

Every such provision is valid in law to all intents and binding on the parties.

All costs and expenses incurred or authorised by a corporation in carrying into execution or otherwise a housing scheme must in pursuance of this section be paid out of the borough fund<sup>1</sup> and borough rate.<sup>2</sup>

<sup>1</sup> Sections 139 to 143 of the Municipal Corporations Act, 1882.

<sup>2</sup> Sections 144 to 149 of the Municipal Corporations Act, 1882.

or by money borrowed by the corporation under this part.<sup>1</sup>

In section 111 the term "working men's dwellings" means buildings suitable for the habitation of persons engaged in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes approved by the council will not prevent the building from being deemed a dwelling.

Probably a municipal corporation that has acquired lands for purposes different to housing would be unable to appropriate them for housing purposes, as land appropriated for one purpose cannot be permanently appropriated to another purpose.<sup>2</sup>

In Scotland land acquired by a Local Authority for the purposes of the Artizans and Labourers Dwellings Improvement (Scotland) Acts, 1875 to 1880, and still held by and vested in them, shall be deemed to be held by and vested in them for the purposes of Part I. and relative provisions of the Housing of the Working Classes Act, 1890, without the necessity of expeding or recording any notarial or other instrument (59 & 60 Vict. c. 31. section 2).

### *Acquisition of Land under Schedule II.*

Land acquired compulsorily is not acquired under "the compulsory clauses" of the Lands Clauses Acts,

<sup>1</sup> Section 106 with the Local Government Board's consent.

<sup>2</sup> Attorney-General v. Hanwell Urban District Council, 1900, 2 Ch. 377.

as the "compulsory clauses"<sup>1</sup> of the Act of 1845 are expressly declared by the Housing Act not to apply except to the extent mentioned in the schedule<sup>2</sup> (section 20).

The Housing Act, and more particularly Schedule II. of the Act, regulates the procedure and method of assessment of compensation.<sup>3</sup>

Some sections of the Lands Clauses Act mentioned in the schedule (Schedule II., Article 27) apply, however, when an appeal is made to a jury.<sup>4</sup> Apart, however, from the compulsory clauses, the Lands Clauses Acts, as amended by the provisions of Schedule II., apply and are deemed part of the Act, subject to the provisions of Part I. of the Act and the following provisions:—

"(i.) The Local Authority may take land by agreement which they may require for the purpose of carrying into effect a scheme authorised by the Confirming Act, but only compulsorily land proposed by the scheme in the Confirming Act to be taken compulsorily.

"(ii.) In the construction of the Lands Clauses Act and the provisions in the Second Schedule to the Housing Act, Part I. is deemed the Special Act, and the Local Authority promoters of the Undertaking. Compulsory powers of purchase shall not be taken three years after the passing of the Confirming Act."

<sup>1</sup> These are sections 16 to 68 of the Lands Clauses Consolidation Act, 1845, Schedule II., Article 27.

<sup>2</sup> *Infra*, p. 509.

<sup>3</sup> Sections 38 to 57 inclusive except sections 47 and 51.

The Lands Clauses Acts are the Lands Clauses Consolidation Act, 1845, The Acts of 1860, 1869, 1883, and 1895.

<sup>4</sup> See also p. 91, *infra*.

*Construction of Housing Acts and Lands Clauses Acts.*

In construing the Housing and Lands Clauses Acts it has been expressly held that section 133 of the Lands Clauses Act, 1845, applies.<sup>1</sup>

Therefore, promoters of an undertaking are liable to make good a deficiency occasioned in the assessment of the poor rates by reason of lands having been taken by them for the purposes of their works, the section so providing. Such liability does not cease till the completion of the works.<sup>2</sup>

Under the Public Health Act, 1875, it has been held that this meant when the last piece of land has been dealt with. "Thus works are completed when a street is constructed and completed if that is all that is contemplated by the undertaking, and if that is all that has to be done; but if the scope of the undertaking is larger, and if land is taken for the purposes of resale then the works are completed when there has been a sale of the fee-simple of the last piece of land or when the last ground rent has been created, whichever of these events should last happen."<sup>3</sup>

<sup>1</sup> *Vestry of the Parish of St. Leonard, Shoreditch v. the London County Council*, 1895, 2 Q.B. 104.

<sup>2</sup> Section 133.

<sup>3</sup> *Governors of the Poor of the City of Bristol v. Mayor of City and County of Bristol*, 18 Q.B.D. 549, 556.

The term works must be used as meaning not merely the structural works but the undertaking.<sup>1</sup>

Again under section 19 of the Artizans and Labourers' Dwelling Improvement Act, an exactly similar section to section 20, it was held that section 121 of the Lands Clauses Act was applicable to cases under the Act.<sup>2</sup>

Some, however, of the sections of the Lands Clauses Act are only partially applicable as they are modified by the Act or the Schedule. It is a matter of some difficulty to discover how far they are affected. Mr. Justice Mathew, in *Wilkins v. The Mayor of Birmingham*, said, "I think it was meant  
 " that we should turn to the schedule and see  
 " how far the Lands Clauses Act was displaced by  
 " the schedule, and so far as it was not displaced  
 " it was intended that the Lands Clauses Act  
 " should be incorporated."<sup>3</sup>

### *Application of the Act to Scotland.*

A reference to any sections of the Lands Clauses Consolidation Act, 1845, shall be construed to mean a reference to the corresponding sections of the Lands Clauses Consolidation (Scotland) Act, 1845 (section 94 (1)).

<sup>1</sup> *Stratton v. Metropolitan Board of Works*, L.R. 10 C.P. 76.

<sup>2</sup> *Wilkins v. Mayor of Birmingham*, 25 Ch.D. 78.

<sup>3</sup> 25 Ch.D. 81.

*Deposit of Maps and Plans.<sup>1</sup>*

Where lands are empowered to be taken compulsorily :—

Article (1).—The Local Authority must as soon as practicable after the passing of the Confirming Act cause to be made out and signed by their clerk, or some other principal officer appointed by them, maps and schedules of all lands proposed to be compulsorily taken, that is the scheduled lands, together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers.

Article (2).—The maps made by the Local Authority must be on such scale and framed in such manner as the Confirming Authority prescribes.<sup>2</sup>

Article (3).—Maps and schedules must be deposited by the Local Authority with the Confirming Authority, and they must deposit and keep copies of such maps at the office of the Local Authority.

*Notice to Claimants.*

Although Schedule II. provides for the appointment of an arbitrator on the deposit of plans, it is not usual to appoint an arbitrator at once. Article 29 (b). Notice is first given by the Local Authority

<sup>1</sup> The articles referred to in the margin have reference to Schedule I. of the Act.

<sup>2</sup> These have not been prescribed.

to claimants to deliver to them a statement in writing within such time, and containing such particulars respecting the compensation claimed as will enable them to make a proper offer of compensation before the appointment of an arbitrator.<sup>1</sup>

Provision is made, however, to meet a case of undue delay in the appointment or refused to appoint an arbitrator. By Article 23, as the appointment is a right to which the party claiming is entitled, he can enforce appointment by an application to the High Court in a summary way by petition.

As a rule a Local Authority will endeavour to come to terms with claimants. They are empowered to send a surveyor or valuer to the property, who is entitled to enter all houses which may be compulsorily taken, after first giving twenty-four hours' notice in writing to the occupier (section 77, 53 & 54 Vict. c. 70.). Anyone obstructing him in the course of his duty would be liable to a fine of 20*l.* under the Summary Jurisdiction Acts<sup>2</sup> (section 89).

Failing an agreement as to price the arbitrator appointed by the Confirming Authority arbitrates between the Local Authority and the persons interested in the scheduled lands or lands injuriously affected by the execution of the scheme.

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<sup>1</sup> See as to effect of failure to deliver particulars to the Local Authority on costs, &c., p. 89.

<sup>2</sup> In Scotland a court of summary jurisdiction means the sheriff or any two justices of the peace sitting in open court, or any magistrate or magistrates within the meaning of the Summary Jurisdiction Acts.



This arbitration is different from that under the Lands Clauses Acts.<sup>1</sup> Under these Acts either the parties appoint arbitrators or an arbitrator, or a jury assesses the compensation.

The failure of a claimant to furnish particulars and a statement of his claim will affect the question of costs.

### *Arbitration.*

Article 4.—Before entering on his arbitration the arbitrator is required to take an oath and subscribe a declaration before a justice of the peace. The declaration may be made before any justice, not merely before a justice of the locality.<sup>2</sup>

The declaration must be in the following form :—

I A. B. do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Housing of the Working Classes Act, 1890.

A. B.

Made and subscribed in the presence of

The declaration must be annexed to the award when made. One declaration only is necessary, as though there may be a number of disputed cases one award only is contemplated.

<sup>1</sup> *Infra*, p. 56.

<sup>2</sup> *Infra*, p. 89.

<sup>3</sup> *Davies v. South Staffordshire Railway Company*, 21 L.J., M.C. 52, a case decided under the Lands Clauses Act, 8 & 9 Vict. c. 18.

Though the making of the declaration seems imperative, yet under section 33 of the Lands Clauses Act, or a similar provision to the one above mentioned, it was decided that its apparent indispensability might be waived: where an umpire had discovered after making his award that he had not made a declaration, an award was held good, when the applicant proposing to set it aside had waived his right by his conduct to do so.<sup>1</sup>

It would appear, therefore, that parties could by consent waive the making of the declaration by the arbitrator.<sup>2</sup>

An arbitrator wilfully acting contrary to his declaration is guilty of a misdemeanour.

Article 6.—On his appointment the Confirming Authority are required to deliver to him the maps and schedules deposited at their office.

#### *Publication of Appointment.*

The Local Authority are required to publish, once in each of three successive weeks, the following particulars:—

- (1) The appointment of an arbitrator.
- (2) The deposit at the office of the Local Authority of the copies of—

Maps and schedules with a description of the situation of the office and a statement of the time at

<sup>1</sup> *Palmer v. The Metropolitan Railway Company*, 31 L.J. (N.S.) 259.

<sup>2</sup> *Ibid.*

*See also Re Levick and the Epsom Railway Company*, 1 L.T. (N.S.)

which such copies may be inspected by any person desirous of inspecting them.

The publication of these particulars is required to be made not only by advertisements but by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice in writing at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained.

Article 32.—The advertisements must appear in one and the same newspaper circulating within the jurisdiction of the Local Authority.

### *Compensation.*

Article 7.—The arbitrator is left to ascertain in such manner as he thinks most convenient the amount of compensation that the claimant claims, and the amount that the Local Authority are willing to pay. After hearing the parties interested who may appear before him at a time and place of which notice has been given, that is, a notice published or made known in such manner as the arbitrator thinks advisable, either by publication in the newspaper or otherwise,<sup>1</sup> he proceeds to decide as to the amount of compensation payable. The arbitrator has no

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<sup>1</sup> See section 18, and Rules 8 and 32. No forms of notice have been published by the Confirming Authorities under s. 27 of the Act

right to decide the right of a claimant to recover. That is determined if in dispute by a subsequent action on the award.<sup>1</sup> (Article 9.) When a decision is arrived at in all the disputed cases brought before him, his award is made under hand and seal, and is final, binding, and conclusive (subject to certain provisions as to appeal) on all persons whomsoever, and it cannot be set aside for irregularity in matter; but the arbitrator may, and if the Local Authority requires shall, from time to time, make an award respecting a portion only of the disputed cases brought before him. Under the Arbitration Act of 1889, 52 & 53 Vict. c. 49. s. 7, an arbitrator has power to correct clerical errors.

Under Article 30 the arbitrator seems to have considerable discretion as to the method in which he will conduct the arbitration. His powers entitle him to call for the production of any documents in the possession or power of the local authority or of any party making any claim under the provisions of Part I. of the Act, which he may think necessary for determining any question or matter to be determined by him under Part I. He may examine any party and his witnesses, and the witnesses for the Local Authority, on oath, and administer oaths for that purpose. He also possesses all the powers of an arbitrator under the Arbitration Act.<sup>2</sup>

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<sup>1</sup> *Wilkins v. The Mayor of Birmingham*, 25 Ch. D. 78.

<sup>2</sup> 52 & 53 Vict. c. 49.

In *Macknight's Trustees v. The Corporation of Edinburgh*, the arbitrator inspected property the subject of an arbitration under the Housing Act in the presence of the parties and their advisers, and issued an order subsequently allowing the parties a hearing with two witnesses only on each side. In an application for leave to appeal by the owner of the lands in the terms of the Schedule, it was held that it was not a sufficient ground for granting leave (1) that the arbitrator had limited the skilled evidence of the value of the lands to two witnesses on each side, or (2) that he had, in addition to hearing such evidence, personally inspected the lands in the presence of the parties, and in his award had proceeded in part on his own judgment as a man of skill.<sup>1</sup>

### *Principles of Compensation.*

The two matters the arbitrator considers are (1) the value of the land scheduled, land including any right over land, and the compensation payable; (2) compensation payable for any land injuriously affected.

His estimate of the value of lands or interests should be based on the fair market value as estimated at the time of the valuation being made of such lands, but such estimate of value is not

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<sup>1</sup> 3 F. Court of Sessions cases, 1901.

limited to the value of the property as given in the estimate made under the improvement scheme<sup>1</sup> (section 21).

In the estimate of value the arbitrator must pay due regard to the nature and condition and probable duration of buildings in their existing state and their state of repair. Without making any allowance in respect of compulsory purchase, that is the usual 10 per cent. where the area or any part of the area has been the subject of an official representation as an unhealthy area, or where lands are included in a scheme which in the opinion of the arbitrator have been so included as falling under the description of property which may be constituted an unhealthy area; land, however necessary for the scheme and so to be compulsorily acquired, but not included as property, which might fall under this description must be paid for with the addition of the allowance for compulsory purchase.<sup>2</sup>

Trade interests must be valued,<sup>3</sup> and the value of covenants must be taken into account. In the case of *in re Chandler's Wiltshire Brewery Company* and the London County Council,<sup>4</sup> the Wiltshire Brewery Company were assignees of the lease of a public house at the yearly rent of £47, subject to the covenants, which comprised a covenant to use the

<sup>1</sup> *Dye v. Patman*, 46 W.R. 200.

<sup>2</sup> *Lord Mayor of Dublin v. Dowling*, 6 L.R. Ir. 502.

<sup>3</sup> *Lord Mayor of Dublin v. Dowling*, 6 L.R. Ir. 502.

<sup>4</sup> 1903, 1 K.B. 569.

premises as a beer-house and for no other trade. The Wiltshire Brewery Company in consideration of £800 underleased the premises at the same rent, but with a covenant restricting the lessee from dealing in beer otherwise than with them under a penalty of £200.

The London County Council requiring the public-house, contended before the arbitrator that the Company were only entitled to compensation for the loss of their interest in land.

The Company contended that they were entitled to the fair market value of their interest in the premises, having regard to the existence of the covenant and to the profit which they would make from the existence of the premises as a tied house.

Mr. Justice Wright, in deciding in favour of the Company's contention, said: "In many cases I  
 " cannot conceive that a covenant running with the  
 " land ought not to be taken into consideration in  
 " ascertaining the value for the purposes of this  
 " Act. Covenants restrictive of building on the  
 " same land or on other neighbouring land must  
 " affect the value of the particular land in question;  
 " covenants not to use for trade, and all sorts of  
 " other covenants which may be easily imagined,  
 " may materially affect the value of the land and of  
 " any interest in it. I do not think it is any  
 " sufficient answer to point out that the value given

“ by such a covenant as that in question is or may  
 “ be a trading value. That is obviously the case,  
 “ because it may depend on the landlord’s trade or  
 “ the tenant’s trade, or upon many other different  
 “ circumstances. I do not think that that is enough  
 “ to enable me to say that the benefit of the covenant  
 “ is no more than a right to damages.”

In such estimate of value no addition or improvement subsequent to the date of the publication of an advertisement (section 21 (b)), stating the fact of the making of an improvement scheme may be included (unless the addition or improvement was necessary for the maintenance of the property in a proper state of repair). Therefore the arbitrator in a claim made for an addition or improvement will have to consider whether it was necessary for the maintenance of the property in a proper state of repair. It has been held that a lessee under covenant with his lessor is entitled to repair and keep in repair the property even after notice from the Local Authority that a Provisional Order had been passed.<sup>1</sup> The claim of the Local Authority to purchase would be no answer to an action by the lessor<sup>2</sup> against the lessee for damages for allowing the property to be out of repair contrary to the covenants of the lease.

In the case of interests acquired subsequently to the advertisement, no separate estimate of the

<sup>1</sup> *Mills v. East London Union*, L.R. 8c, p. 79.

<sup>2</sup> *Higgins v. Lord Mayor of Dublin*, 28 L.R. Ir., 484.



value can be made which increases the amount of compensation payable.

In *Wilkins v. The Mayor of Birmingham*<sup>1</sup> it was held, independently of section 14(b) that the publication of the advertisement was equivalent to the notice to treat under the Lands Clauses Act, and that, therefore, no created interest since the publication could be allowed. Therefore a lessee whose terms had nearly expired was held not entitled to obtain a new lease and claim compensation in respect of it.

The arbitrator must receive evidence if tendered—

(1) That the rental of premises was enhanced by reason of an user for illegal purposes or by being so overcrowded as to be dangerous or injurious to the health of the inmates.

(2) That the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisance, or are in a state of defective sanitation or are not in reasonably good repair.

(3) That the house or premises are unfit and not reasonably capable of being made fit for habitation.

The principal Acts relating to nuisances are the Public Health Act, 1875, and the Public Health (London) Act, 1891,<sup>2</sup> the Public Health (Scotland) Act, 1897, and the Public Health (Ireland) Act or any local Acts.

(3) That the house or premises are unfit and not reasonably capable of being made fit for human habitation.<sup>3</sup>

If the arbitrator is satisfied by evidence of the existence of the condition of things mentioned in

<sup>1</sup> 25 Ch. D. 78, 49 L.T. (N.S.), 468.

<sup>2</sup> See p. 127.

<sup>3</sup> See *infra*, p. 125.

(1, 2, and 3), he is required to apply the following principles of assessment. In (1) to take as the basis of valuation the rental the premises would let at if they were let for a legal purpose, or that that would be obtained if they were occupied by the number of persons they were fitted to accommodate without overcrowding. In (2) to take the value of the premises if they were in a sanitary condition or reasonably good state of repair or if the nuisance were abated, and then deduct the estimated expense of putting them into a sanitary condition or a reasonably good condition of repair. In (3) to take the value of the land and of the materials thereon.

*Lands injuriously affected.*

In dealing with lands injuriously affected by the scheme it must be borne in mind that the injury often comes into existence till a later date than the passing of the scheme.

The effect of a scheme might be to destroy an easement of lights or a right of way, or a right of support, but no claim might arise in the first case until the right was interfered with by buildings on the land.<sup>1</sup>

In *Barlow v. Ross* <sup>2</sup> an easement of light was in process of being acquired, when a scheme was passed

<sup>1</sup> *Badham v. Marris*, 45 L.T. 579.

<sup>2</sup> 24 Q.B.D. 381.

subsequently the plaintiff's lights were interfered with. As the scheme had the effect of destroying the inchoate easement the question arose as to whether he had any redress.

It was held by the Court of Appeal that plaintiff would have been entitled to compensation as the word "rights must be construed as including not " only actual existing and completed rights, but " inchoate rights." <sup>1</sup>

Thus, where the effect of the pulling down of a house was to destroy a right of support, it was held that no right of action arose, the only claim being under the section for compensation.<sup>2</sup> The breach of a restrictive covenant may be a ground for compensation.<sup>3</sup>

On the purchase by the Local Authority of lands (section 22), all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands or part thereof, and all other rights or easements in or relating to such lands or any part thereof are extinguished, and all the soil of the subways and the property in the pipes, sewers, or drains vests in the Local Authority. The arbitrator is to determine the compensation payable to any party whose lands are injuriously

<sup>1</sup> *Barlow v. Ross*, 24 Q.B.D. 392, per Lord Esher.

<sup>2</sup> *Swainston v. Finn and the Metropolitan Board of Works*, 52 L.J., Ch. 235, 48 L.T. (N.S.) 634.

<sup>3</sup> *The Long Eaton Recreation Grounds Company, Limited v. Midland Railway Company* (1902), 2 K.B. 574; 71 L.J.K. 837.

affected, is required to determine them as nearly as possible as he would in determining compensation for land.

With reference to pipes and drains, the owners of these should obtain protective clauses inserted in the scheme if they desire to keep their rights intact. Otherwise, their only remedy is the compensation prescribed by the Act.

Where lands are injuriously affected, as has been already stated, a right to damages is usually the only remedy. The Local Authority cannot be stopped, since they are proceeding under the statute and the statute gives them the right to take the land.

### *Severance of Land.*

Under the Lands Clauses Act, 8 & 9 Vict. c. 18, section 92, no party can be required to sell and convey a part only of any house or other building or manufactory if he be willing and able to sell and convey the whole thereof<sup>1</sup> (Article 12).

But an arbitrator, notwithstanding this section, may determine that such part of any house, building, or manufactory as is proposed to be taken by the Local Authority can be taken without material damage to such house, building, or manufactory, and may, if he so determine, award compensation in respect of the severance of the part so proposed to be

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<sup>1</sup> See power under the Act in respect of obstructive dwelling (p. 157, *infra*).

taken in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the Local Authority such part without the Local Authority being obliged to purchase the greater part or the whole of such house, building or manufactory.

The exercise of this power by the arbitrator, however, gives either the Local Authority or the person interested a right of appeal to a jury.<sup>1</sup> The arbitrator in determining whether material damage will be occasioned by the severance must consider all the circumstances of the case. Thus in the matter of an arbitration between E. Gonty and the Manchester Sheffield and Lincolnshire Railway Company, the Company,<sup>2</sup> under their special Act, were entitled, notwithstanding section 92 of the Lands Clauses Consolidation Act, 1845, to take a portion of certain houses or other buildings or manufactories scheduled in their Act without being obliged to take the remainder, if the portion taken could in the opinion of the authority to whom the question of disputed compensation should be submitted be severed from the remainder of the property without material detriment thereto. The Company gave notice to treat for a portion of certain property and before the arbitrator undertook to provide access to the remainder of the property by means of a right

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<sup>1</sup> *Infra*, p. 94.

<sup>2</sup> 1896, 2 Q.B. 439 (C.A.).

of way over the portion taken. The Court held that all things must be taken into consideration to find out how the severance had taken place, that the Company were legally entitled to provide a means of access, and that the arbitrator was entitled to find that no material detriment had been occasioned to the remainder of the property.

In the case of the Caledonian Railway Company *v.* Turcan the House of Lords<sup>1</sup> declined to review a finding of an arbitrator on a somewhat similar clause to that contained in Article 12 of Schedule II. of the Housing Act.

Under Part II., section 29, "a dwelling-house" means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto, or usually engaged thereunto, and includes the site of the dwelling-house as so defined. In section 92 of the Lands Clauses Act, 1845, the words are "house, other building, or manufactory." The word house in this section has been construed as having a wide meaning, and embraces the definition above mentioned under Part II.<sup>2</sup> of the Housing Act. It would include a shop or an inn,<sup>3</sup> but not land, which is unnecessary for the convenient use and occupation of the house.<sup>3</sup>

<sup>1</sup> A.C. H.L. (1898), 256.

<sup>2</sup> *Grosvenor v. Hampstead Junction Railway Company*, 26 L.J., Ch. 721.

<sup>3</sup> *Richards v. Swansea Improvement and Tramway Company*, 9 Ch. D. 42.

The word building would cover any other erection not being a house or manufactory : —

"A manufactory may be a house, or it may be a building, but it may be more than one house or more than one building, or it may consist of neither, but only of land used for manufacturing purposes. If the main use of the premises is for manufacturing purposes, they would appear to be properly called a manufactory, although part may be used for selling purposes, and the articles manufactured be different from those sold, provided the businesses are carried on as a whole by one person, with one body of servants and with one capital."

### *Power of Apportionment.*

Article 11. The arbitrator has the same power of apportioning any rent service, rent charge, chief or other rent payment or incumbrance, or any rent payable in respect of lands comprised in a lease as two justices have, under the Lands Clauses Consolidation Act, 1845.

In Scotland he has the same power of apportioning any feu duty, ground, annual casualty or superiority or any rent, or other annual or recurring payment or incumbrance, or any rent payable in respect of lands comprised in a lease, as the Sheriff has under the Lands Clauses Consolidation (Scotland) Act.

Where land is subject to a mortgage, by section 112 of the Lands Clauses Act, 1845, and part only of the

<sup>1</sup> *Steele v. Midland Railway Company*, 1 Ch. 275.

<sup>2</sup> *Grosvenor v. Hampstead Junction Railway Company*, 26 L.J., Ch. 731.

*Richards v. Swansea Improvement Company*, 9 Ch. D. 125.

*Alexander v. Crystal Palace Railway Company*, 30 Beav., 55 t.

mortgaged lands is taken, if the parties fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation. The Lands Clauses Acts provide many ways of settling compensation, but the Housing Act only this one before the arbitrator, except when the parties have a right to a jury. With reference to the costs of an apportionment, probably they are in the arbitrator's discretion.<sup>1</sup>

### *Omitted Interests.*

Article 13. - The amount of purchase money or compensation to be paid in pursuance of section 124 of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the Local Authority have, through mistakes or inadvertence, failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid in like manner as near as may be as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims.

The arbitrator has power to award the costs of the failure or omission to purchase<sup>2</sup> against the

<sup>1</sup> *Richards v. Swansea Improvement Company*, 9 Ch. D. 425, per Brett, L.J., 434-436.

<sup>2</sup> Article 29, *infra*, p. 89.



claimant or the Local Authority, as the case may be, through whose fault the failure or omission arose.

### *Deposit of Award.*

Article 10. The award when made must be deposited at the office of the Confirming Authority, and a copy must be deposited at the office of the Local Authority. Once in each of three successive weeks following on the deposit the Local Authority must publish notice<sup>1</sup> of the deposit of a copy of the award at their office and a further notice requiring all persons claiming to have any right to or interest in the lands the compensation to be paid in respect of which is ascertained by such award to deliver to the Local Authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice) a short statement in writing of the nature of such claim, and a short abstract of the title on which it is founded. The Local Authority pays for the abstract and statement.

### *Abstract of Title.*

Such abstract of title, styled in Scotland the Legal progress of the title deeds, in the case of a freeholder, shall commence twenty years previous to the date of the claim, except where there has been an

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<sup>1</sup> See p. 62.

absolute conveyance or sale within twenty years, and more than ten years previous to the claim, when the abstract shall commence with such conveyance.

Article 22.—But the Local Authority are entitled to a further abstract or evidence of title respecting any lands included in any such award in addition to such abstract or statement, but they must pay the costs.

### *Payment of Purchase Money.*

Article 14.—Within thirty days from the delivery of the claimant's statement and abstract, or legal progress of title deeds in Scotland, where the claimant appears to be absolutely entitled<sup>1</sup> to the lands, estate, or interest claimed, the Local Authority on demand must give a certificate stating the amount of compensation to which the claimant is entitled to under the award.

Article 15.—The certificate must be prepared at the Local Authorities' expense. Where lands or interests in lands are taken by agreement, and the person is absolutely entitled to the lands, they may give a like certificate.

Article 16.—Thirty days after demand the Local Authority is required to pay to the party to whom a certificate has been given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such

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<sup>1</sup> See *Re Smith*, 46 Ch. D. 386, 58 L.J., Ch. 108.

certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.<sup>1</sup> The cases hereinafter mentioned refer to payments into the bank<sup>2</sup> where parties are not absolutely entitled or are under disability, or where the title cannot be deduced, or where the claimant refuses to produce his title, or other cases which are dealt with later on.

The party absolutely entitled to the money must be paid within thirty days, or the payment must be made into the bank, since

### *Wilful Default in Payment.*

Article 17.—A wilful default in payment entitles the party named in the certificate to enter judgment against the Local Authority, as if he had been authorised by warrant of attorney from the Local Authority to enter up judgment for the amount mentioned in that certificate, with costs, as is usual in like cases. All moneys payable under such certificates or to be recovered by such judgments shall be deemed in law and equity as personal estate as from the Local Authority's entry on the lands.

This proviso prevents the operation of the rule that money paid into Court under section 69 of the Lands Clauses Act is reconverted into realty until

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<sup>1</sup> In Scotland, heirs, executors, or assigns.

<sup>2</sup> Articles 20 and 21.

some party becomes absolutely entitled, when the reconversion can be stopped.<sup>1</sup>

Article 34 (II).—In Scotland, however, the procedure is different. When the Local Authority makes wilful default in payment, the party named in the certificate is entitled to record the same in the books of Council or Sessions or other Judges' books competent, and to have a decree interponed thereto, and to be extracted with a view to execution in the like manner as if a formal clause of registration had been contained therein, and all diligence and execution shall be competent thereon in the like manner, and to all effects, as upon any bond containing such formal clause of registration : and all moneys payable under such certificates, or to be recovered by such execution and diligence as aforesaid, shall be taken as personal estate as from the time of the Local Authority's entry on the land.

### *Entry on Lands.*

Article 18.—When and so soon as the Local Authority have paid to the party to whom a certificate has been given or have paid into a bank<sup>2</sup> the amount certified to be payable as compensation to the party, his executors, administrators, or assigns<sup>3</sup> the Local Authority have a right to enter lands upon obtaining

<sup>1</sup> *Kelland v. Fultord*, 6 Ch. D. 491.

<sup>2</sup> *Infra*, p. 84.

<sup>3</sup> In Scotland, "heirs, executors, or assignees," Article 33(b).

a receipt and to hold them for the estate or interest in respect of which the amount specified in the certificate was payable.

Article 19.—The party receiving the moneys paid for compensation shall give the Local Authority a receipt which has the effect of a grant, release, and conveyance of the estate and interest of such party and of all claimants under or through him in the lands in respect of which such moneys are paid. The receipt requires an *ad valorem* stamp of the same amount impressed thereon as would have been necessary if such receipt had been an actual conveyance of such estate or interest. The receipt is prepared by the Local Authority. As the receipt acts as a conveyance it should state the land or property or interest purchased as the case may be. A separate proceeding is provided for the recovery of costs where the claimant is entitled to them.

Article 34 (III.)—In Scotland, the party receiving the compensation is required to give the Local Authority a conveyance of the lands, or of all the estate and interest of such party and of all parties claiming under or through him in such lands, and every such conveyance shall be prepared at the costs of the Local Authority.

When, pursuant to the provisions relating to payment, the money is paid into a bank, the

Authority are entitled to enter on the lands.<sup>1</sup> Besides the right to enter on lands on payment, either to the claimant or into the bank, the Local Authority have the right to enter land before payment on the fulfilment of certain conditions.<sup>2</sup> Before considering these, the cases where money must be paid into the bank must be considered. These have already been referred to.<sup>3</sup>

*When Money paid into the Bank.*

Where the claimant appears to the Local Authority not to be absolutely entitled to the lands, estate, or interest, or is under a disability, or the title is not in the Local Authorities' opinion satisfactorily deduced, then the amount to be paid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, since repealed by the Supreme Court of Judicature Funds Act, 1872,<sup>4</sup> with respect to purchase money or compensation coming to parties having limited interests, or prevented from treating or not making a title. That is in accordance with the provisions of sections 69 to 80 of the Lands Clauses Consolidation Act.

<sup>1</sup> In *re Shaw* and the Corporation of Birmingham, 27 Ch. D. 614, a case under an exactly similar section of the Artizans' and Labourers' Dwellings Improvement Act, 1875.

<sup>2</sup> Articles 24 and 25.

<sup>3</sup> *Supra*, p. 80.

<sup>4</sup> The words as amended by the Court of Chancery Funds Act, 1872, have no application to Scotland.

In Ireland the 13 & 14 Vict. c. 51. is substituted for the Court of Chancery Funds Act.

*Refusal to Produce Title.*

Article 21.—Where a claimant refuses to produce his title, or where the Local Authority has, under the provisions of Part I. of the Act, taken possession of lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within a year from the time of taking possession—or where the claimant to whom the certificate has been given or tendered refuses to receive it or to accept the amount specified therein—the Local Authority must pay the amount or the amount specified in the certificate into the Bank of England, in Scotland into any of the incorporated or chartered banks of Scotland, and in Ireland to the Bank of Ireland, as the case may be, where it will remain to be dealt with under the Court of Judicature Funds Act in England, and sections 69 to 80 of the Lands Clauses Act.

*Failure to deliver Certificate.*

Article 23.—A failure from any reason whatever to deliver a certificate entitles the claimant the possession of whose lands has been taken by the Local Authority to petition the Supreme Court, in Scotland the Court of Session, in a summary way to determine his right to the certificate at the Local Authority's expense, and all other rights and interests of any party or parties arising under the

provisions of the Act may in like manner be enforced against the Local Authority on application to the Supreme Court, or in Scotland the Court of Session. The procedure in such a case in England is by petition to the High Court to be determined in a summary way.<sup>1</sup>

### *Entry on Deposit.*

Article 24.—When a Local Authority are desirous for the purpose of their works of entering upon lands before they would be entitled to enter—that is, before they have paid the compensation found due by the arbitrator, or paid money into the bank<sup>2</sup>—they may deposit in the Bank of England<sup>3</sup> such sum as the arbitrator certifies to be the proper amount to be deposited in respect of lands authorised to be purchased or taken by the Local Authority and mentioned in such award, and to enter upon and use such lands for the purpose of their improvement scheme. The arbitrator is empowered at any time, at the request of the Local Authority, after he has framed his award to certify the sum that the Local Authority, in his opinion, should deposit. The sum deposited on his certificate should be the sum or the amount of sums set forth in the award, or

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<sup>1</sup> *Infra*, p. 87.

<sup>2</sup> *Supra*, p. 82.

<sup>3</sup> In Scotland the money must be paid into one of the incorporated or chartered banks; in Ireland, into the Bank of Ireland.



such greater amount as the arbitrator, under the circumstances of the case, may judge proper. Notwithstanding the entry, all proceedings for and in relation to the completion of the award, the delivery of certificates and other proceedings under Part I. shall be had, and payments made as if such entry and deposit had not been made.

The Local Authority entering upon lands in this manner must pay interest at the rate of 5 per cent. per annum upon the compensation money payable by them in respect of any lands so entered upon from the time of their entry until the time of the payment of such money and interest to the party entitled thereto. If the money is required to be paid into the bank, then till the same with such interest be paid into the bank accordingly. In any case where under this provision interest is payable on any compensation money, the certificate to be delivered by the Local Authority in respect thereof shall specify that interest is so payable. Interest is recoverable in the same manner as the principal money mentioned in the certificate.

The amount that the arbitrator certifies should be deposited in no way gives a legal title to the Local Authority, and till the award is made and completed the property remains vested in the owner.<sup>1</sup> Therefore an order made by a magistrate

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<sup>1</sup> *Barnett v. Metropolitan Board of Works*, 46 L.T. (N.S.) 38.

requiring an owner to take down a portion of the structure of some houses under the Metropolitan Building Act, and subsequent orders made adjudging that the owner should pay legal expenses and the expenses of putting hoarding round the houses was held rightly made,<sup>1</sup> where the Local Authority had not taken possession, the award not having been completed.

Apart from the provision for entry on lands by deposit of money before the completion of the award by payment, a Local Authority has no power of entry except where they are authorised to enter for the purposes of survey or valuation,<sup>2</sup> except with an owner's or occupier's consent. An entry made without such consent would render them liable to an action for ejectment or trespass<sup>3</sup> and to a penalty under section 89 of the Lands Clauses Act which is incorporated with the Housing Act.<sup>4</sup>

### *Money deposited in the Bank.*

Article 25.—Money deposited in the Bank of England, of Ireland,<sup>5</sup> or one of the incorporated or chartered banks of Scotland,<sup>6</sup> shall be paid to such account as may from time to time be directed by any

<sup>1</sup> *Barnett v. Metropolitan Board of Works*, 46 L.T. (N.S.) 38.

<sup>2</sup> Section 77, *supra*, p. 60.

<sup>3</sup> *Birmingham and District Land Company v. the London and North Western Railway Company*; *Stretton v. Great Western Railway Company* 5 Qb. App. 73.

<sup>4</sup> See Section 20, *supra*, p. 58.

<sup>5</sup> Article 35 (*b*).

<sup>6</sup> Article 33 (*f*).

regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order in England of the High Court, or in Scotland of the Court of Session,<sup>1</sup> and remain by way of security to the parties interested in the lands which have been so entered upon for payment of the money to become payable to the Local Authority in respect thereof under the arbitrator's award, and the money so deposited may, on the application by petition of the Local Authority, be ordered to be invested in Bank Annuities or Government securities and accumulated; in Scotland in Government securities only,<sup>2</sup> and upon such payment as aforesaid by the Local Authority it shall be lawful for the Supreme Court, or in Scotland the Court of Session upon a like application, to order the money so deposited or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the Local Authority, or in default of such payment as aforesaid by the Local Authority it shall be lawful for the said Court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited. The practice is in most cases under Order 55 r.r. of the rules

<sup>1</sup> Article 33 (e).

<sup>2</sup> Article 31 (f).

of Supreme Court. In *re* Artizans' and Labourers' Dwellings and Improvement Act, *ex parte* Jones.<sup>1</sup>

Where a petition was presented by a mortgagor of freehold premises which had been taken under the Artizans' and Labourers' Dwellings Act by the Metropolitan Board of Works, praying for payment out of the purchase money to the mortgagees on account of their mortgage debt; also that all the costs of and incidental to the petition might be paid by the Board, the mortgagees having been served and appearing, the Master of the Rolls ordered the Board to pay in addition to the petitioner's costs 42s. for the mortgagee's costs and the costs of an affidavit of service on the mortgagee.<sup>2</sup>

*Costs of Arbitration and Costs not otherwise  
provided for.*

Article 28.—The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges and expenses (if any) which may be incurred by the Confirming Authority in carrying the provisions of Part I. of the Act into execution—that is, the costs not otherwise provided for—shall, after the amount shall have been certified under this article, be paid by the Local Authority. The amount shall from time to time be certified by the Confirming

<sup>1</sup> 14 Ch. D. 624.

<sup>2</sup> These are under Sec. 8 (8), p. 43; s. 16 (2), p. 40; Sections 294 and 298 of the Public Health Act, 1875, p. 40.

Authority after first hearing any objections to their reasonableness by or on behalf of the Local Authority. The Confirming Authority's certificate shall be taken as proof in all proceedings at law or in equity of the the amount of such respective costs, charges, and expenses. The certified amount becomes a Crown debt due from the Local Authority.

A certificate may be made a rule of a superior court on the application of any party named therein and may be enforced accordingly.

*Powers of the Arbitrator over Costs.*

Article 29 (1).—The arbitrator where he thinks fit on the request of any claimant may certify the amount of the costs properly incurred by him in relation to the arbitration. Costs, when certified, must be paid by the Local Authority. The power appears to be discretionary. Apart from such certificate, there is no power in the Act to tax costs or to appeal against the arbitrator's certificate, but

Article 29 (a).—An arbitrator shall not be required to certify costs where he considers them not properly payable by the Local Authority, nor shall he be required to certify the costs incurred by any party in relation to the arbitration, where

(Article 29 (b)) he considers that such party neglected, after due notice from the Local Authority,

to deliver to that authority a statement in writing within such time and containing such particulars respecting the compensation claimed as would have enabled the Local Authority to make a proper offer of compensation to such party before the appointment of the arbitrator. Where no application was made to the arbitrator to certify such costs, the Court held they had no power to grant them. Such costs are not in the jurisdiction of a taxing master, but solely under that of the arbitrator.<sup>1</sup>

Article 29 (c).—No certificate shall be given where the arbitrator has awarded the sum or a less sum than has been offered by the Local Authority in respect of the claim before the appointment of the arbitrator.

Article 29 (2).—If the amount certified is not paid seven days after demand to the party entitled to receive it, such amount shall be recoverable as a debt due from the Local Authority, with interest at 5 per cent. for any time during which the same remains unpaid after the seven days have elapsed. The notice of demand may be served by delivering the same to the Local Authority (section 87, 53 & 54 Vict. c. 70), or by leaving the same at his office or with some person employed there.

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<sup>1</sup> *In re Agnew v. Keenan* (1900), 1 Ir. R. 33.

*Appeal.*

Article 26.- An appeal is given from the arbitrator in the following cases :—

- (a) When a party named in a certificate, or a party claiming under him, is dissatisfied with the amount in such certificate<sup>1</sup> certified as payable, and the amount exceeds £1,000.
- (b) When a party claiming any interest in moneys paid into court is dissatisfied with the amount of the price as compensation in respect of which such moneys are paid into court, and such amount exceeds £1,000.
- (c) Where the Local Authority is dissatisfied with the amount awarded, provided that such amount exceeds £1,000.

The party dissatisfied must, however, obtain the leave of a Judge of the Supreme Court or of the Court of Session in Scotland, which leave may be granted in a summary way by the Court or any judge thereof at chambers, upon being satisfied that a failure of justice will take place if the leave is not granted, the party is then entitled to submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing

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<sup>1</sup> *Supra*, p. 78.

to the other party of their intention to appeal within ten days after the cause of appeal has arisen. The applicant for leave to appeal can elect either to move the Court or proceed in chambers; either course is open to him, but if he apply in chambers, there is no right of appeal from a refusal of a judge to grant leave,<sup>1</sup> the leave of appeal should be on notice to the other side.<sup>2</sup>

It must be noticed that in each case the appeal lies against the amount awarded by the arbitrator, but in an Irish case it was held that a claimant to whom several sums, each less than 1,000*l.*, but amounting in the aggregate to more than 1,000*l.* in respect of an estate held under the same title, on an award had a right to appeal.<sup>3</sup>

No leave will be granted on the affidavits of valuers who swear that in their opinion the amount awarded is less than the true value.<sup>4</sup> The arbitrator's action must have amounted to a failure of justice. Mr. Justice Holmes, in the Irish case, said, "It is not necessary to establish that justice " has been defeated in the result finally arrived at. " No doubt, if it can be shown that the amount " awarded exceeds or falls short of the value of the " premises, leave ought to be granted. But a

<sup>1</sup> In *re* the Housing of the Working Classes Act, 1900, *ex parte* Stevenson, 1892, 1 Q.B. 394: affirmed 1892, 1 Q. B., 609; 61 L.T. Q.B. 492; 66 L. T., (N.S.), 544.

<sup>2</sup> *Ex parte* Birch, 2 Ir., Rep. (1894), 2 Q.B.D., p. 186.

*Ex parte* Birch, 2 Ir. Rep. (1894), 2 Q.B.D. 181.

<sup>3</sup> *Ibid.*



“ litigant has a right to something more than a  
 “ decision that is not manifestly unjust. He is  
 “ entitled to have his case presented and dealt with  
 “ by the tribunal that hears it in the way that the  
 “ law permits and justice requires. If the arbitrator  
 “ had rejected material evidence that was legally  
 “ admissible, or had acted on evidence that he ought  
 “ to have excluded; if he had disregarded elements  
 “ of value which he was bound to regard, or if he  
 “ had taken into account matters which ought not  
 “ to have influenced him. If, in fact, there had  
 “ been a violation of any principle, the observance  
 “ which was necessary for the due administration of  
 “ justice, I would hold that the condition required  
 “ by this section to enable the Court to make the  
 “ order had been fulfilled, even although I was not  
 “ satisfied that the result finally arrived at was  
 “ erroneous.”<sup>1</sup> The Court of Session in Scotland  
 in *Macknight’s Trustees v. The Corporation of*  
*Edinburgh*<sup>2</sup> in declining leave to appeal against an  
 award expressed the opinion that the onus of proving  
 a failure of justice rested on the applicant.<sup>3</sup>

A cause of appeal arises. That is the time from  
 which the ten days’ notice must date, at the date of  
 the issue of the certificate, or the payment of the  
 money into Court, as the case may be; or, when the

<sup>1</sup> *Ex parte Birch*, 2 Ir. Rep. (1894); 2 Q.B.D. 188.

<sup>2</sup> *See also ex parte Lambeth*, I.G. and L.R. 225.

<sup>3</sup> Court of Session Cases, 3 F. 1901-90.

Local Authority appeals, at the date of the making of the award.

Article 12.—The right of appeal to a jury has previously been stated to exist,<sup>1</sup> where the arbitrator has determined with reference to the severance of a building. The notice to appeal in such a case must be given within the same time as notice of an intention to appeal against the amount of compensation.<sup>2</sup> The money limit, apparently, has no application.

An appeal probably lies, in addition to those given under the schedule, under the Arbitration Act of 1889. Section 7 provides that an arbitrator or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power (1) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; (2) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Under section 10, in all cases of reference to arbitration, the Court or Judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpires.

If leave is obtained to appeal to a jury (Article 27) and notice given, or where leave is unnecessary, as where the arbitrator has determined a question

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<sup>1</sup> *Supra*, p. 73.

<sup>2</sup> *Supra*, p. 93.

of severance, a question arises of disputed compensation to be determined by the verdict of a jury within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections 38 to 57, both inclusive, to apply except sections 47 and 51. Provided also that—

(1) When the Local Authority appeals the Local Authority is the plaintiff, in Scotland "the Pursuer;" the party claiming the compensation, the defendant: in Scotland the defender, and

(2) Where the party claiming compensation appeals then in case the verdict of the jury is for a sum exceeding the arbitrator's award the local authority shall pay such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the High Court, but in case the verdict is for a sum not exceeding the arbitrator's award, the party appealing shall pay to the Local Authority the costs of the trial, to be taxed and ascertained as aforesaid. Where, on appeal, the jury gives a larger sum than the arbitrator awarded, and the difference between the two sums is paid into Court, interest at 4 per cent. per annum is payable on the difference from the date of the first to the date of the second payment.<sup>1</sup>

Where the Local Authority is appellant—

(a.) Though the verdict of the jury be less than the arbitrator's award, the Local Authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same was tried shall direct.

(b.) Where the verdict of the jury is for a sum equal to or exceeding the arbitrator's award, the Local Authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

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<sup>1</sup> *Re Shaw*, 27 Ch. D. 614: 54 L.J., Ch. 51: 51 L.T. (N.S.) 684.

(c.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they are required to make an independent assessment of the amount of compensation to which the party is entitled.

*Death or Incapacity of Arbitrator.*

Article 31.—If an arbitrator appointed dies or refuse, decline, or become incapable of acting, the Confirming Authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed ; and upon the appointment of an arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable of acting all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the Local Authority shall publish notice of such appointment in the London Gazette.<sup>1</sup>

*Notice when Fifteen or more Houses taken.*

By section 14, when the Local Authority have acquired the legal right to enter upon lands either as already detailed by payment or deposit, they may, if they choose, proceed to pull down houses or buildings which they require for their scheme. Before, however, taking any fifteen houses—that is, taking possession of them for this purpose—they

<sup>1</sup> In Scotland, "Edinburgh Gazette;" in Ireland, the "Dublin Gazette."

must make their intention known to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses; but the houses cannot be taken till the Local Authority have obtained the certificate of a Justice of the Peace that it has been proved to his satisfaction that the Local Authority have made known their intention to take such houses. Not less than thirteen weeks' notice is required.

Notice can be given before the lands are purchased, as where money is deposited to entitle the Local Authority to enter. But it does not appear necessary to give this notice before proceedings to purchase the lands are commenced.

#### *Compensation to Tenants for Expenses of Removal.*

Power is given to the Local Authority (section 78), in cases where the tenant's tenancy is for less than a year, and where possession is desired of the premises for the purpose of pulling them down, where the premises are not closed by a closing order, to make him a reasonable allowance for his expenses of removal. Under section 121 of the Lands Clauses Act, 1845, a tenant who is required to give up possession before his term has expired is entitled to compensation for compulsory purchase, which would probably cover removal expenses. As

this section is incorporated in the Housing Act, it seems to follow that section 78 provides for cases where the tenant would not be entitled to compensation except for section 78, as he would not be entitled to an allowance for compulsory purchase under section 121 of the Lands Clauses Act, 1845, by reason of his premises being situate in an unhealthy area, and consequently being subject to the provisions of section 1.<sup>1</sup> Under section 121 of the Lands Clauses Act compensation for compulsory purchase includes compensation for removal. The words in the section "are wide enough to include " every kind of damage or loss which the tenant " can suffer." <sup>2</sup>

Where the premises are closed by a closing order (section 32), the Local Authority may still make the tenant a reasonable allowance on account of his expenses of removal. But the allowance must have been authorised by the Court which made the closing order. The amount allowed is a civil debt due to the Local Authority from the owner, and may be recovered summarily.

### *Expenses and Accounts.*

The receipts of a Local Authority (section 24 (1)) under Part I. form a fund called the Dwelling House

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<sup>1</sup> *Supra*, p. 66.

<sup>2</sup> *Reg. v. Great Northern Railway Company*, 2 Q.B.D. 156.

Improvement Fund. Expenditure is defrayed out of this fund. In London expenses incurred under Part III. (*infra*, Chapter IV.) are defrayed out of this fund (section 65).

Moneys (section 21 (2)) required in the first instance to establish the fund and any deficiency from time to time appearing by reason of the excess of expenditure over receipts is supplied by the local rates or money borrowed under the Act.<sup>1</sup>

Care should be taken so as to ultimately defray expenditure from the property dealt with under the scheme (section 24 (3)). Any balance of profit is applicable to any purposes for which the local rate is for the time being applicable. In urban districts this balance would be payable to the General District Fund.

Separate accounts (by section 80 (1)) are required to be kept by the Local Authority of their receipts and expenditure under each part of the Act, but section 4 of the Housing Act of 1898 (63 & 64 Vict. c. 57.) now enacts that where land acquired by a council under Part III. is appropriated for the purpose of rehousing persons displaced by the council under any powers of any other part of that Act or of any other enactment, the receipts and expenditure in respect of that land (including all costs in respect of the acquisition

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<sup>1</sup> Section 71, Local Government Act, 1888.

and laying out of the land) and of any buildings erected thereon may be treated as receipts and expenditure under that part or enactment, but shall be accounted for under a separate head.

Accounts are audited (section 80 (2)) in the like manner and with the like power to the officer auditing them, and with the like incidents and consequences, as the accounts of the Local Authority are for the time being required to be audited by law.

The County Council's accounts are audited by the District Auditor.<sup>1</sup> Urban or Rural Sanitary Authorities under the Public Health Act of 1875.<sup>2</sup> Metropolitan Borough Councils by the District Auditor.<sup>3</sup>

The Act imposes no limit on a rate levied to defray the expenses of a scheme (section 24 (4)), and a limit imposed in respect of local rates has no application.

Money or produce of property legally applicable (section 21 (5)) to purposes similar to the purposes of an improvement scheme may be carried to the accounts of the Dwelling House Improvement Fund. Where the Local Authority are in doubt as to whether the purposes are so similar the Confirming Authority decides the doubt.

<sup>1</sup> Section 71, Local Government Act, 1888.

<sup>2</sup> Sections 246-253.

<sup>3</sup> By section 14 of 62 & 63 Viet., and section 71 of the Local Government Act of 1888.



Expenses are met out of the local rates. These are<sup>1</sup>—

### IN ENGLAND AND WALES.

1. In the City of London, the sewer rate and the consolidated rate,<sup>2</sup> levied by the Common Council, or either of such rates (Schedule I.).

2. In the County of London, the county fund, and the amount payable shall be deemed to be required for special county purposes (Schedule I.).

By section 68<sup>3</sup> of the Local Government Act,<sup>4</sup> all receipts of the county council, whether for general or special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made in the first instance out of that fund. In this Act the expression "special county purposes" means any purposes from contribution to which any portion of the county is for the time being exempt, and also includes any purpose where the expenditure involved is by law restricted to a hundred, division, or other limited part of the county.

3. In urban districts,<sup>5</sup> the rate is out of which the general expenses of the execution of the Public Health Act are defrayed (Schedule I.).

<sup>1</sup> Housing of the Working Classes Act, 1890, Schedule I.

<sup>2</sup> Leviable under 11 & 12 Vict. c. clxiii. ; 14 & 15 Vict. c. xci.

<sup>3</sup> 60 & 61 Vict. c. cxxxiii. s. 7.

<sup>4</sup> 51 & 52 Vict. c. 11.

<sup>5</sup> By section 92, Housing of Working Classes, it is provided that, unless the context otherwise requires, district local authority and local rate mean respectively the areas, bodies of persons, and rates specified in the First Schedule to the Act, but in Part III. of Act, in reference to any power given by that part or any act to be done in pursuance thereof, shall mean such areas, bodies, or persons and rate only in cases where that part of the Housing Act is adopted or being adopted.

The local rate is usually the general district rate levied under the Public Health Act, 1875, sections 207 and 210. It may, however, be in a borough the borough rate.

A note at the end of Schedule I. provides that in any case in the United Kingdom where an urban district authority does not levy a borough rate, or any general district rate, but is empowered by a local Act or Acts to borrow money, and levy a rate or rates throughout the whole of their district for purposes similar to those or some of those for which a general district rate is leviable, it shall be lawful for such sanitary authority to defray the expenses incurred in the execution of Part III. by means of money to be borrowed and rate or rates to be levied under such local Act or Acts.

#### IN SCOTLAND.

In districts under the Public Health (Scotland) Act, 1897,<sup>1</sup> exclusive of parishes or parts thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend. The rate is the Public Health General Assessment<sup>2</sup> (Schedule I.).

#### IN IRELAND.

In urban districts,<sup>3</sup> the rate is the rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed.

<sup>1</sup> 60 & 61 Vict. c. 38.

<sup>2</sup> *Ibid.*, s. 153.

<sup>3</sup> The Local Government (Ireland) Act, 61 & 62 Vict. c. 37.

*Borrowing Powers.*

Local Authorities may borrow on the security of the local rates for the purpose of the expenses of an Improvement Scheme (section 25 (1)). These local rates have been specified above (*supra*, p. 101). They are also given in the Schedule (Schedule I.). In the case of the County Council this is the county fund.

For the purpose of borrowing the London County Council (section 25 (2)) may, with the consent of the Treasury, create consolidated stock under the Metropolitan Board of Works Loans Act 1869-1871, but all moneys required for the payment of the dividends on and the redemption of the consolidated stock created for the purposes of Part I. of the Act must be charged to the special county account to which the expenditure for the purposes of Part I. of the Act is chargeable.

The London County Council (Money) Act, 1896, provides that where the Council create consolidated stock for the purpose of any scheme made by the Metropolitan Board of Works or the Council under the Housing of the Working Classes Act, 1890, or any enactments repealed by that Act, all moneys required for payment of dividends on and the redemption of all consolidated stock created for such purpose shall be charged to the special county account to which the expenditure for the purposes of the said Acts is chargeable.

In London the maximum term for borrowing under section 27 of the Metropolitan Board of Works (Loans) Act, 1869, was sixty years. The maximum term is now eighty years (3 Edw. 7. c. 39. s. 15).

“ and such sum as will be sufficient with compound  
 “ interest to repay the money borrowed within such  
 “ period not exceeding eighty years as may be  
 “ sanctioned by the London County Council shall be  
 “ substituted for two pounds per cent. in section 190  
 “ of the Metropolis Management Act, 1855.”

The Common Council (section 25 (3)) may borrow and take up at interest money on the credit of the local rates, or may mortgage the rates to persons advancing money to secure the repayment with interest. For the purpose of a mortgage the clauses of the Commissioners Clauses Act, 1847,<sup>1</sup> apply and are incorporated in the Act. Mortgagees or assignees of mortgagees may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

Urban District Authorities<sup>2</sup> (section 25 (4)) possess similar powers of borrowing as they possess under the Public Health Acts for the purpose of defraying any expenses incurred by them in the execution of those Acts. These borrowing powers are conferred by sections 233 to 243 of the Public Health Act, 1875, although the first clause of section 233 apparently gives an unlimited power to borrow, section 234 materially curtails and places a limitation on the power. Thus subsection 1 provides that money

<sup>1</sup> Sections 75 and 88.

<sup>2</sup> Sections 233-243 Public Health Act.

In all cases the Local Government Board's consent is necessary.

shall not be borrowed except for permanent works (including under this expression any works of which the cost ought, in the opinion of the Local Government Board, to be spread over a term of years), and by

Subsection 2. The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed.

By subsection 3. When the sum proposed to be borrowed, with such balances (if any), would exceed the assessable value for one year the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board.

Subsection 4. The money may be borrowed for such time, not exceeding sixty years, as the Local Authority with the sanction of the Local Government Board determine.

In Scotland money may be borrowed for the purpose of an Improvement Scheme in the same manner as nearly as may be, and subject to the same conditions, as money may be borrowed for the erection of hospitals under the Public Health Scotland Amendment Act, 1871, and any Acts amending the same (section 96 (2)).

*Public Works Loans Commissioners.*

The Public Works Loans Commissioners (section 25 (5)) may, on the recommendation of the Confirming Authority, lend to any Local Authority any money required by them for the purposes of the Act on the security of the local rate. Such loan shall be repaid within fifty years<sup>1</sup> as the Confirming Authority may recommend. The minimum rate of interest is now 2 $\frac{3}{4}$  per cent.<sup>2</sup> Section 83 provided that it should be not less than three pounds two and sixpence per cent., as the Treasury authorised from time to time as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer.

By the Act of 1903, 3 Edw. 7. c. 39. section 1, the maximum period which may be sanctioned as the period for which money may be borrowed by a Local Authority for housing purposes is eighty years, and eighty years is substituted for the sixty years mentioned in the subsection above.<sup>3</sup>

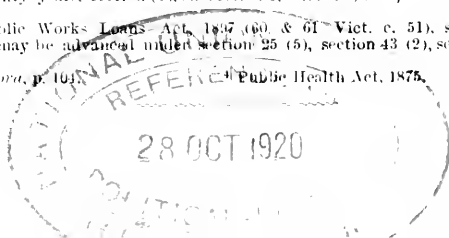
Furthermore, money borrowed under the Housing Act of 1890, or amending Acts, shall not be reckoned as part of the debt of the Local Authority for the purposes of the limitation on borrowing under subsections 2 and 3 of section 231.<sup>4</sup>

<sup>1</sup> Eighty years, section (1), subsection 1, 3 Edw. 7, c. 39, in England and Wales.

<sup>2</sup> Public Works Loans Act, 1897 (60 & 61 Vict. c. 51), section 1. Money may be advanced under section 25 (5), section 43 (2), sections 66 and 67.

<sup>3</sup> *Supra*, p. 103.

<sup>4</sup> Public Health Act, 1875.



## CHAPTER II.

So far the manner of making and the procedure to be followed in carrying out an improvement scheme have been dealt with. It is now proposed to consider the essentials of the minor scheme known as the reconstruction scheme, and the ancillary powers under Part II. of the Act and the Amendment Acts. These powers are administered by the Local Authorities, but the Local Authorities are not in all cases the same as those on whom the Legislature has cast the duty of carrying out an improvement scheme.

*Local Authorities.*

*In London, outside the City.*—The Local Authority is the Borough Council.

*In the City of London.*—The Common Council.

*Outside London.*—The Urban District Council or the Borough Council.

*In the Rural Districts.*—The Rural District Council.

*In Scotland.*—The Local Authority under the Public Health (Scotland) Act, 1897, in districts under the Public Health (Scotland) Act, 1897, exclusive of

parishes or parts thereof over which the jurisdiction of a Town Council or of Police Commissioners, or Trustees exercising the functions of Police Commissioners, does not extend. In other districts, the Local Authority in those districts.

*In Ireland.*--In urban sanitary districts, the Urban Sanitary Authority; in rural sanitary districts, the Rural Sanitary Authority.

### *A Reconstruction Scheme.*

A reconstruction scheme (section 39) is simpler in execution than an improvement scheme, from which it differs in various ways. The method of arbitration is not the same; it is intended that it should be adopted when "a site is too small to be dealt with as an unhealthy area under Part I. of the Act"; and, unlike an improvement scheme, it is not necessarily made directly on the official representation<sup>1</sup> of a medical officer of health, although in practice his opinion is generally asked and duly considered.

In rural districts, moreover, it is the only scheme that can be made.<sup>2</sup>

No definition is given of what is meant by "a site too small to be dealt with as an unhealthy area under Part I." In the City of London and urban districts it is not, perhaps, of great importance whether an improvement or a reconstruction scheme

<sup>1</sup> Representation must be made of dwelling-houses unfit for habitation and obstructive buildings.

Part I. of the Housing Act does not apply to rural districts.



is adopted, since the Local Authority's discretion is absolute in adopting either one or the other,<sup>1</sup> subject only to the assent of the Confirming Authority to the scheme itself. But in the county of London, where the County Council is the Local Authority under Part I. and the Borough Councils under Part II., difficult questions arise, which will be considered later on.<sup>2</sup>

In any of the following cases :—

(a) where an order for the demolition of a building has been made<sup>3</sup> (section 39 (1)), and the Local Authority are of opinion that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes :—

(1) dedicated as a highway or open space ; or

(2) appropriated, sold, or let for the erection of dwellings for the working classes ; or

(3) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on

<sup>1</sup> They are authorities under Parts I. and II. of the Housing Act.

<sup>2</sup> *Infra*, p. 118.

<sup>3</sup> That is, where a closing order has not been obeyed, or where the medical officer has reported it as an obstructive building. See *infra*, p. 158.

exchange will be appropriated, sold, or let for such erection ; or

- (b) where it appears to the Local Authority that the closeness, narrowness, and bad arrangement or bad condition of any building, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings, is dangerous or prejudicial to the health of the inhabitants either of the buildings or of the neighbouring buildings, and that the demolition or the reconstruction and rearrangement of the buildings or of some of them is necessary to remedy the evils, and that the area comprising those buildings, and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area as the subject of an Improvement Scheme ;

the Local Authority<sup>1</sup> shall pass a resolution<sup>2</sup> to the above effect, and direct a scheme to be prepared.

An order for the demolition of a building may be an order for only the demolition of part of the house where a part is severable.<sup>3</sup>

<sup>1</sup> *Supra*, p. 8, as to committees.

<sup>2</sup> *Supra*, p. 12, as to voting.

<sup>3</sup> *Cf. supra*, p. 72.

If it includes the whole house, then, as will be shown later on, the Local Authority can purchase the site, and under their powers<sup>1</sup> keep it as an open space, or dedicate it as a highway or other public place.

"A building," said Lord Justice Turner, "is a word of wider significance than a house."<sup>2</sup> It ought to be in some degree adapted both to be used by man, either for a residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building.<sup>3</sup> The masonry on the sides of a canal is not sufficient to constitute it a "building." A London street, though paved and fenced with stonework, would yet be land, whilst the Holborn Viaduct would be a building.<sup>4</sup> A bay window is a building, and its addition to a house will be a breach of covenant not to erect any building in advance of the house.<sup>5</sup>

As would be expected in a minor scheme, the Local Authority do not have to consider the bad arrangements of the streets, but the closeness, narrowness, and bad arrangement of the buildings. Moreover, they have not to go so far as to consider whether they will be dangerous or injurious to health, since it is enough if they are prejudicial to health.

<sup>1</sup> Section 38 (11 and 12).

<sup>2</sup> *Grosvenor v. Hampstead Junction Railway Company*, 1 De G. and J. 446.

<sup>3</sup> *Per Erle J., Powell v. Boraston*, 34 L.J.C.P. 73; 18 C.B. (N.S.) 175.

<sup>4</sup> *Per Blackburn J., R. v. Neath Canal Navigation*, 40 L.J.M.C. 197.

<sup>5</sup> *Manners v. Johnson*, 45 L.J. Ch. 494; L.R. 1 Ch. B. 673.

The Local Authority are bound to pass a resolution and carry out a scheme, and the Confirming Authority can enforce obedience to their orders by *Mandamus* (3 Edward 7. c. 39. s. 1 (1).

A Local Authority, moreover, who have failed to carry out an improvement scheme, failure of which has been the subject of an inquiry,<sup>1</sup> can be compelled in this manner to carry out a reconstruction scheme as the Confirming Authority directs, just as if they had passed a resolution.

The same restrictions that apply to voting by members of local boards, referred to in Chapter I., apply to voting here, and in fact throughout the Act (*supra*, p. 12).

The Local Authority may work by committee (*supra*, p. 8).

Notice of the scheme may at any time after its preparation (section 39 (2)) be served in the manner provided with reference to notice of lands proposed to be compulsorily taken under an improvement scheme.<sup>2</sup> Notices must be served on every owner or reputed owner,<sup>3</sup> lessee or reputed lessee, and occupier of any part of the area comprised in the scheme so far as they can be reasonably ascertained, but advertisements are not required. It is sufficient to designate an owner as the owner without name or

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<sup>1</sup> *Supra*, p. 17. In England and Wales query whether the power did not exist before under Part II.

<sup>2</sup> *Supra*, p. 28.

<sup>3</sup> *Infra*, p. 141.

further description (section 50). Upon service of the necessary notices the Local Authority proceed to petition the Local Government Board (section 39 (3)) for an order sanctioning the scheme. The Local Government Board may then hold a local inquiry<sup>1</sup> and if satisfied on the report of such local inquiry that the carrying into effect of a scheme either absolutely or subject as to conditions or modifications would be beneficial to the health of the inhabitants of the buildings or neighbouring dwelling-houses may sanction by order the scheme with or without conditions or modification. The scheme may include, if the Local Government Board require (section 40), the insertion of provisions for the dwelling accommodation of persons of the working classes displaced by the scheme as the circumstances require. These include a power in England and Wales to provide and maintain, with the consent of the Local Government Board (3 Edward 7. c. 39. s. 11 (1)), jointly if desired with any other person in connection with such dwelling or lodging-house accommodation, any building adapted for use as a shop, any recreation grounds or other building or land which, in the opinion of the Local Government Board, will serve a beneficial purpose in connection with the requirements of those for whom the dwelling accommodation

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<sup>1</sup> *Supra*, p. 41. The Local Government Board has jurisdiction in London.

or lodging-houses are provided, and to raise money for the purpose, if necessary, by borrowing.<sup>1</sup>

With reference to working class dwellings, these may be provided under Part III. of the Act, Chapter III. ; Local Authorities possess other powers. Some of these have been referred to in Chapter I.<sup>2</sup> They include power to appropriate land<sup>3</sup> for workmen's dwellings, to lease and purchase existing lodging-houses,<sup>4</sup> and where the Local Authority is a municipal corporation to convert corporate lands into sites for working men's dwellings.<sup>5</sup> The Working Classes Dwellings Act of 1890 applies,<sup>6</sup> and when the Local Authority is a corporate body it may sell, exchange, or lease corporate land for the erection of dwellings.<sup>7</sup> Other powers will be found in Chapter III.

The scheme in its area may include neighbouring lands in England and Wales when the Local Authority (3 Edward 7, c. 39. s. 7) are of opinion that such inclusion is necessary for making their scheme efficient, but in the case of such lands, the exclusion of an additional allowance for compulsory purchase does not apply.<sup>8</sup>

When a Provisional Order is made, the Local Authority may purchase by agreement the whole of the area.

<sup>1</sup> *Supra*, p. 51.

<sup>2</sup> *Supra*, p. 53. *Infra*, p. 195.

<sup>3</sup> *Supra*, p. 53. *Infra*, p. 196.

*Infra*, p. 196.

<sup>5</sup> *Supra*, p. 51. *Infra*, p. 231.

<sup>6</sup> 53 & 54 Vict. c. 16.

<sup>7</sup> *Supra*, p. 51. *Infra*, p. 231.

<sup>8</sup> *Infra*, p. 231.

An endeavour to arrive at an agreement as to price should be specially made, as the authorities must take steps to purchase all the lands as soon as practicable.<sup>1</sup> Failing an agreement to get rid of the opposition, and it must be the whole opposition, the order remains provisional only. In the event of an agreement it takes effect without Parliamentary confirmation. When it remains provisional the Local Authority must publish the order by inserting a notice in the London, Edinburgh, or Dublin Gazettes, as the case may be, and must serve it on the owners<sup>2</sup> in every part of the area.

Within two months after such publication any owner may petition the Local Government Board section 37 (5), against the order, but the Local Government Board (3 Edward 7. c. 39. s. 6 (1)) may, if they think fit,<sup>3</sup> on the application of the Local Authority in England and Wales, make any modifications in the scheme to which the order relates for the purpose of meeting the objections of the petitioner and withdraw the order sanctioning the original scheme substituting for it an order sanctioning the modified scheme.

In this case the same procedure as to the publication (if any) (3 Edward 7. c. 39. s. 6 (2)) and giving

<sup>1</sup> By subsection 9, section 39, the provisions of Part I. are applied to the completion of a scheme with the necessary modifications, *see* section 12, subsection 1.

<sup>2</sup> *Infra*, p. 347.

<sup>3</sup> This and the following provision apply to an improvement scheme.

notices, and the same provisions apply as to the presentation of petitions and the effect of the order sanctioning the original scheme,<sup>1</sup> but no petition shall be received or have any effect except one which was presented against the original order or one which was concerned solely with the modifications made in the scheme as sanctioned by the new order.

If a petition is presented against the original or modified scheme and not withdrawn, the order requires to be confirmed by Parliament. But where the Local Government Board (section 39 (6)) are satisfied of the due publication of the order and that two months from such publication have expired, and that no petition has been presented, or if presented that it has been withdrawn, they may confirm the order, which thereupon comes into operation without the necessity of an Act of Parliament.

A scheme thus confirmed may be modified if the Local Authority (section 39) satisfies the Local Government Board that an improvement can be made in its details, and the Local Government Board may allow a modification of any part which it appears inexpedient to carry into execution.

The modifications may take place where the scheme does not require Parliamentary sanction or where it does.

When Parliamentary sanction is necessary the

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<sup>1</sup> *Supra*, p. 112.



Standing Orders of both Houses of Parliament must be complied with where the scheme involves the taking of twenty or more houses occupied wholly or partially by persons of the working class (*infra*, p. 216).

If confirmed by Parliament (section 39, 9 (a)), a statement of the modification must be laid before the Houses of Parliament as soon as practicable.

In any case if the modification requires a larger expenditure (section 39, 9 (b)) than that sanctioned by the original scheme, or authorises the taking of property compulsorily, or injuriously affects any property in a manner different from that proposed in the original scheme, without the consent of the owner or occupier of such property, notice of the order authorising the modification must be published. The order may then be petitioned against, and is subject to Parliamentary confirmation as if it were an order sanctioning an original scheme.

Any order may incorporate the provisions of the Lands Clauses Acts.<sup>1</sup> The Local Authorities (section 39 (7)) then become promoters of the undertaking and the Housing Acts are deemed the special Acts.

The area must be acquired within three years. In the case of Parliamentary opposition (section 39 (8)) the provisions as to the costs of opposition to improvement schemes apply.<sup>2</sup> So do the provisions

<sup>1</sup> 8 Vict. c. 18.; 23 & 24 Vict. c. 106.; 32 & 33 Vict. c. 18.; 46 & 47 Vict. c. 15.; 58 & 59 Vict. c. 11.

<sup>2</sup> *Supra*, pp. 43, 44.

with regard to completion of a scheme,<sup>1</sup> extinction of rights of way and other easements,<sup>2</sup> with the necessary modifications. As to compensation and expenses, *see infra*, pp. 166, 176.

*Special Provisions relating to Improvement or  
Reconstruction Schemes in London.*

The power that county councils possess in London (outside the City) and the rural districts in cases where the borough councils and rural district councils neglect to carry out their duties by failing to apply for closing orders (p. 124), in making demolition orders (p. 153) and orders dealing with obstructive buildings (p. 157) will be hereafter referred to. Exclusively in London, however, the county council have the power of taking over the duties of a borough council in making a reconstruction scheme. The power arises when the county council have intervened on the neglect of the borough council to carry out their duties in respect of any of the above-mentioned matters, or it may arise on the direct representation of a borough council that a reconstruction scheme ought to be made. In either case the council may take proceedings for preparing and obtaining confirmation of a scheme, subject, however, to the scheme relating to more than ten houses. The provisions respecting

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<sup>1</sup> *Supra*, p. 26.

<sup>2</sup> *Supra*, p. 70.

such scheme have been already referred to (*supra*, p. 113); they apply in like manner as if the county council were the borough council carrying out the scheme, and all expenses incidental to the scheme and to carrying it into effect are paid out of the county fund (section 46 (6)). This, however, is subject to an important exception. Where the council consider that such expenses, or a contribution in respect of them, ought to be paid or made by a borough council, they may apply to a Secretary of State, and the Secretary of State if satisfied that, having regard to the size of the area, to the number, position, structure, and sanitary conditions and neighbourhood of the buildings to be dealt with, the borough council ought to pay or make a contribution in respect of the expenses, the Secretary of State may order such payment or contributions to be made, and the amount becomes a simple contract debt due from the borough council to the county council (section 46 (6)).

The order of the Secretary of State is not now necessary, except in cases where the county council and the borough council disagree, for a borough council are now authorised, if they think fit, to pay or contribute towards the payment of any expenses of the London County Council in connection with a reconstruction scheme (3 Edward 7. c. 39. section 14), and they are also authorised to borrow any money for the purpose of purchase money or compensation

payable in respect of a reconstruction scheme (3 Edward 7, c. 39, section 11). Though by the Housing of the Working Classes Act, 1891, section 1, the borrowing powers of a borough council are extended to any purpose, the Local Authority are authorised to borrow. Still, these additional powers are only conferred by the scheme itself duly sanctioned or by the order sanctioning it. As the county council promote the reconstruction scheme and obtain it, it is doubtful whether a borough council can be called upon to contribute except in respect of purchase money or compensation.

Since in London outside the City the county council are the Local Authority whose duty it is to carry out an improvement scheme and the borough councils are Local Authorities for the purposes of a reconstruction scheme, questions frequently arise as to whether the former or the latter authority ought to make a scheme, provision is made for determining these by the Home Secretary. Passing from the cases where either the borough councils neglect to make certain orders already referred to, or where on the direct representation of the borough council the county council makes a scheme—it seems that all schemes relating to not more than ten houses must be carried out by the borough council. For it is expressly enacted that where an official representation is made relative to not more than ten houses to the London County Council, the London County Council

shall not take any proceedings on such representation, but shall direct the Medical Officer of Health who made it to represent the case to the borough council, whose duty it then becomes to deal with it (section 72).

In either of the following cases :-

(a) Where a Medical Officer of Health has represented to any borough council in the County of London that any dwelling-houses are in a condition so dangerous or injurious to health as to be unfit for human habitation, or that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the County of London that it should be dealt with by an improvement scheme (that is, by the London County Council); or

(b) Where an official representation has been made to the London County Council in relation to any houses, courts, or alleys within a certain area and that council resolve that the case of such houses, courts, or alleys is not of general importance, and should be dealt with as a reconstruction scheme (that is, by the borough council), such borough council

or the London County Council may submit such resolutions to the Secretary of State. (With reference to interested persons voting (*supra*, p. 12)). The Secretary of State may appoint an arbitrator and direct him to hold a local inquiry, and such arbitrator shall hold a local inquiry and report to the Secretary of State as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses and of the neighbourhood thereof, and to the provisions of Part I. (that is, the provisions relating to an improvement scheme), the case is either wholly or partially of any and what importance to the County of London, with power to such arbitrator to report that, in the event of the case being dealt with under Part II. (that is, as a reconstruction scheme), the London County Council ought to make a contribution in respect of the expense of dealing with it (section 73 (1)).

The Secretary of State, after considering the report, may, according to him as it seems just, decide that the case should be dealt with either as an improvement or a reconstruction scheme. There-

upon the Medical Officer of Health or other proper officer must forthwith make the representation necessary for proceedings in accordance with such decision (section 73 (2)).

Without, however, invoking the Home Secretary's decision in this way, the county council and the borough council may come to an agreement. Thus, assuming that the borough council propose to make a reconstruction scheme, the county council may, if they think fit, pay or contribute to the payment of the expenses of carrying into effect a reconstruction scheme (section 46 (7)). Such payment or contribution, it would seem, would not include a payment or contribution to the expenses incurred in connection with proceedings leading up to the confirmation of a scheme, as the words of the section are the expenses of carrying it into effect. When the county council decline or fail to agree to pay or make a contribution and the borough council consider that the expenses of carrying a scheme into effect or a contribution towards them ought to be paid or made by the county council, the borough council may apply to the Secretary of State, who, if satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the council ought to pay or make a contribution in respect of the expenses, may order such payment or contribution to be made. The amount becomes a

simple debt due from the London County Council to the borough council (section 17 (7)).

### *Closing Orders.*

A closing order (section 29) " means an order prohibiting the use of premises for human habitation " made under the enactments set out in the Third " Schedule to the Act,<sup>1</sup> unless the context otherwise " requires."

These are the Sanitary Act, 1866 (section 21), and Nuisances Removal Act, 1855 (sections 8, 12, and 13), in the Administrative County of London;<sup>2</sup> elsewhere than in London the Public Health Act, 1875 (sections 91, 94, 95, and 97).

In Scotland the Public Health (Scotland) Act, 1867 (sections 16, 18, and 19).<sup>3</sup>

In Ireland the Public Health (Ireland) Act, 1878 (sections 107, 110, 111, and 113).

A closing order may be made under the Public Health Acts or under the Housing Acts.

Before steps can be taken to close a dwelling-house<sup>4</sup> under the Housing Acts (section 30) it must be unfit for human habitation; that is, so dangerous or injurious to health as to be unfit for human habitation.

<sup>1</sup> *Infra*, p. 325.

<sup>2</sup> In London the Nuisances Removal Act has been repealed by the Public Health (London) Act, 1891; but *see* note *infra*.

<sup>3</sup> In Scotland the Public Health Act of 1867 has been repealed by the Public Health Act of 1897.

<sup>4</sup> It need not be occupied. *Robertson v. King*, 1901, 2 K.B., 70 L.J.K.B. 639.



*Unfit for Human Habitation.*

As the Public Health Acts and the Housing Acts are Health Acts and not Building Acts, and the Medical Officer of Health is the official who is to pronounce his opinion on the matter, the better opinion is that the words "dangerous to health" do not mean dangerous in a physical sense, though structural defects might render a house reasonably unfit for human habitation.

In a house or part of a house let to a person of the working class for habitation there is implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. A letting for habitation to a person of the working class means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by section 3 of the Poor Rate Assessment and Collection Act, 1869, and in Scotland or Ireland four pounds. The Poor Rate Assessment and Collection Act (32 & 33 Vict. c. 41) provides :—

(Section 3.) In case the rateable value of any hereditament does not exceed twenty pounds if the hereditament is situate in the Metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament for any term not being less

than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent. on the amount thereof.

West Ham is by a local Act within the Metropolis.<sup>1</sup> The word condition has been judicially interpreted, and has been held to apply to defective repair and to render a landlord liable for want of repair, as a promise is implied that the house should be reasonably fit for human habitation.<sup>2</sup>

The promise of the landlord is that the house should be reasonably fit for habitation at the time of the letting, and there was nothing under the Act of 1890 to prevent a landlord from contracting out of his legal liability at the time of the letting. Apparently in Scotland and Ireland he can still do so, but in England, by the 3 Edward 7, c. 39, s. 12, it is declared that section 75 of the principal Act which relates to the condition to be implied on letting houses for the working classes shall, as respects any contract made after the passing of the Act, take effect notwithstanding any agreement to the contrary, and any such agreement made after the passing of the Act shall be void.

The result is that a landlord can no longer contract himself out of his liability. Another point

<sup>1</sup> Manning *v.* Simpson, 62 J.P. 137.  
<sup>2</sup> Walker *v.* Hobbs, 23 Q.B.D. 158.

to be noticed is that, as a weekly tenancy does determine without notice, there is no reletting at the end of each week.<sup>1</sup>

### *A Dwelling House.*

A dwelling-house—section 290—“means any inhabited building,”<sup>2</sup> and includes any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined unless the context otherwise requires.” It is said that it must be inhabited unless the context otherwise requires,<sup>3</sup> but it need not be inhabited by persons of the working classes, since its occupation is not so limited by the Act.<sup>4</sup>

### *Under the Public Health Act, London.*

A closing order can only be made where it is proved to the satisfaction of a court of summary jurisdiction that by reason of a nuisance a dwelling-house is unfit for habitation.<sup>5</sup> A closing order may prohibit a dwelling-house from being used for habitation.<sup>6</sup> Form C. of the Housing Act prohibits absolutely a house being used for habitation. The

<sup>1</sup> *Bowen v. Anderson* (1891), 1 Q.B. 161; *Jones v. Mills*, 10 C.B. (N.S.) 7887.

<sup>2</sup> Under the Public Health Act, London, 1891, “house” includes schools, also factories and other buildings in which persons are employed.

<sup>3</sup> The expressions “building” and “house” respectively include the curtilage of a building or house, and include a building or house wholly or partially erected under statutory authority.

<sup>4</sup> See *Robertson v. King*, 1901, 2 K.B., 70 L.J.K.B. 7630.

<sup>5</sup> Public Health Act, 1901, section 5, subsection 7.

<sup>6</sup> *Ibid.*, section 5, subsection 6.

following are nuisances for the purposes of the Public Health Act, London, 1891:—

- (a) Premises<sup>1</sup> in such a state as to be a nuisance<sup>2</sup> or injurious or dangerous to health.<sup>3</sup>
- b) Any pool, ditch, gutter, watercourse, cistern, watercloset, earth closet, privy, urinal, cesspool, drain, dung pit, or ash pit, so foul or in such a state as to be a nuisance or injurious to health.<sup>4</sup>
- c) Any animal kept in such place or manner as to be a nuisance or injurious or dangerous to health.<sup>5</sup>
- d) Any accumulation or deposit which is a nuisance or injurious to health.<sup>6</sup>
- e) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family.<sup>7</sup>
- (f) Any such absence from premises of water fittings as is a nuisance by virtue of section 33 of the Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), set out in the First Schedule to the Act.

<sup>1</sup> Includes messuages, buildings, lands, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority.

<sup>2</sup> A nuisance either interfering with personal comfort or injurious to health. *Bishop Auckland Local Board v. The Bishop Auckland Iron Co.*, 10 Q.B.D. 138.

<sup>3</sup> Identical with section 91 (1) of the Public Health Act, 1875.

<sup>4</sup> Identical with section 91 (2) of the Public Health Act, 1875.

<sup>5</sup> Identical with section 91 (3) of the Public Health Act, 1875.

<sup>6</sup> Identical with section 91 (4) of the Public Health Act, 1875.

<sup>7</sup> Identical with section 91 (5) of the Public Health Act, 1875.

(g) Any factory, workshop, or work place which is not a factory subject to the provisions of the Factory and Workshop Act 1878<sup>1</sup> (41 & 42 Vict. c. 16) relating to cleanliness or ventilation, and

- (i) is not kept in a cleanly state and free from effluvia, arising from any drain, privy, earth closet, watercloset, urinal or other nuisance, or
- (ii) is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that are a nuisance and dangerous to health,
- (iii) is so overcrowded whilst such work is carried on as to be dangerous or injurious to the health of those employed there.

But (i) any accumulation or deposit necessary for the effectual carrying on of any business or manufactory shall not be punishable as a nuisance under this section if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture and that the best available means have been taken for preventing injury thereby to the public health; and (ii) in considering whether any dwelling-house or part of a dwelling-house which is used also

<sup>1</sup> Now repealed by the Factory and Workshop Act, 1901, 1 Edward 7. c. 22. Schedule 7.

as a factory, workshop, or work place, used also as a dwelling-house, is a nuisance by reason of overcrowding, the Act and shall have regard to the circumstances of such other user.<sup>1</sup>

On two convictions a closing order may be obtained.<sup>2</sup>

In the country outside London proceedings are regulated by the Public Health Act, 1875.

In addition to the nuisances prescribed in the Public Health Acts, under the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72. s. 9), a tent, van, shed, or similar structure used for human habitation which is in such a state as to be a nuisance or injurious to the health of the inmates, whether or not members of the same family, is deemed a nuisance, and the provisions of the Act apply accordingly.

In Scotland, section 16 of the Public Health Act (Scotland), 1897, which repeals the Public Health (Scotland) Act, 1867, includes under the term nuisance any insufficiency of size, defect of structure, defect of ventilation, want of repair, or proper drainage, or suitable watercloset or privy accommodation or cess-pool, and any other matter or circumstance rendering any inhabited house, building, or premises, or part thereof, injurious to the health of the inmates or unfit for human habitation or use.

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<sup>1</sup> Compare with section 91 of the Public Health Act, 1875.

<sup>2</sup> Public Health Act, London, 1891, section 7.

<sup>3</sup> Public Health Act, 1875, section 109.

*Duties of Medical Officers of Health.*

Under the Housing Act (section 30) it is the Medical Officer of Health's duty in a district to represent in writing to the Local Authority (section 79 (2)) of his district any dwelling-house<sup>1</sup> which appears to him to be in a state so dangerous or injurious to health<sup>2</sup> as to be unfit for habitation. For this purpose he is entitled to enter and inspect any dwelling-house.<sup>3</sup> If the owner or occupier prevents either him (section 51 (1)) or the sanitary officer or inspector of nuisances, after receiving notice of their intention, any court of summary jurisdiction may order any such persons to permit the place to be inspected. A failure to comply with an order of a court of summary jurisdiction renders the offender, at the expiration of ten days after service of the order, liable to a fine not exceeding twenty pounds a day as long as the failure to comply with the order continues. If the failure is by the occupier, the owner is not liable unless he assents to it (section 51 (2)).

A right of inspection also arises under section 102 of the Public Health Act, 1875. An entry can be made between the hours of nine in the morning and six at night for the purpose of examining as to the existence of any nuisance thereon, and where a nuisance has been ascertained to exist, the Local

<sup>1</sup> *Supra*, p. 127.<sup>2</sup> *Supra*, p. 125.<sup>3</sup> *Supra*, p. 125.

Authority or any of their officers are entitled to be admitted from time to time between these hours till the nuisance is abated, or the works ordered to be done are completed. When the premises are business premises only inspection may be made at any time when such business is in progress or is usually carried on.

Where under the Public Health Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the Local Authority or any of their officers shall be admitted from time to time into the premises between the hours of nine a.m. and six p.m., and in the case where a business is being carried on during the time such business is in progress or is usually carried on. Two recent cases, the Wimbledon Urban District Council *v.* Hastings (87 L.T. 118; 67 J.P. 45), and the Consett Urban District Council ((1903), 2 K.B., 183), decide that section 102 does not authorise an entry on private premises without the permission of the occupier being first requested, and that the words "shall be admitted" mean shall be permitted to enter, and that implies that permission must be asked for. The order for admission will not be granted by a justice as a matter of course, cause may be shown against it.

When an order for abatement or prohibition has not been complied with, or has been infringed, the



Local Authority or any of their officers shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists in order to abate it. On admission being refused, the Local Authority's officer, after reasonable notice in writing of his intention to make it, given to the person having custody of the premises, may be authorised by a justice of the peace on oath made before him of the fact to enter. The order continues in force as long as the nuisance is unabated, or the work for which the entry was necessary has been done. A person refusing to obey an order of a justice for admission of the Local Authority or any of their officers is liable to a fine of five pounds.

Under the Public Health Act (1891) London powers of entry exist under sections 10, 12, and 115. Under section 115, however, it has been held that a sanitary inspector who applies for a warrant must show to the magistrate some reasonable ground for such entry. Merely showing that in seeking admission he was acting honestly with a view to the discharge of his duties will not suffice.<sup>1</sup>

The Medical Officer's district means the area specified in the table contained in the First Schedule

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<sup>1</sup> *Vine v. North London Collegiate School*, 63 J.P. 244. See also section 305 of the Public Health Act, 1875.

to the Act.<sup>1</sup> In London outside the City, this is the borough council's area. In the City, the City's area. In the country, the borough council's area. Elsewhere, the urban or rural district area. In Scotland and Ireland, *see* Schedule I., pp. 307-308.

Notwithstanding that it is the Medical Officer's duty to make a representation, it is equally the duty of the Local Authority from time to time to cause inspection to be made for the purpose of discovering houses unfit for habitation. The Public Health Acts also prescribe the inspection of districts to discover nuisances requiring abatement (Public Health Act, 1875, section 92; Public Health Act (London), 1891, section 1).

The object of the Medical Officer in making a representation is to induce a Local Authority to give an abatement notice (except in certain cases where it is now unnecessary) with a view of stopping a nuisance or closing the house. An abatement notice being a step required both by the Housing Acts and the Public Health Acts before legal proceedings can be taken.

### *Representations on which a Local Authority may act.*

In taking steps to deal with a house unfit for human habitation in this way a Local Authority may act either on the written representation of its

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<sup>1</sup> *Infra*, p. 306.

Medical Officer of Health<sup>1</sup> or of any of its officers,<sup>2</sup> or on information given by way of representation from a Medical Officer of Health (section 52) of a county submitted by such officer to the county council and forwarded by them to the Local Authority, not being a borough as defined by the Municipal Corporations Act of 1882. A representation submitted in this way by a county council is tantamount to a representation from the Medical Officer of the district in which the house unfit for habitation exists.

In London any Medical Officer of Health appointed by the county council is deemed a Medical Officer of Health to a borough council, and is therefore entitled to make a representation to any borough council (section 76 (2)).

Four or more householders (section 31 (1)), moreover, living in or near a street<sup>3</sup> which includes in its definition any court, alley, street, square, or row of houses, may complain to the Medical Officer of Health of the district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation. It is then the Medical Officer's duty to forthwith inspect it and transmit the complaint with his opinion to the Local Authority, and if in his opinion the complaint is well founded he must make a representation

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<sup>1</sup> *Supra*, p. 5.

<sup>2</sup> Sanitary inspector or inspector of nuisances.

<sup>3</sup> See *Taylor v. The Corporation of Oldham*, 4 Ch. 395.

to the Local Authority, but the absence of complaint will not free him from his duty of inspection and representation.

Under the Local Government Act of 1894 a parish council is entitled to make a representation in the same way as the four or more householders,<sup>1</sup> but without prejudice to the power of such householders.

In urban districts when the Local Authority declines or neglects to take proceedings within three months after a complaint and opinion or representation has been received, the four householders who made the original complaint may petition the Local Government Board for an inquiry. The Local Government Board may, as the result of the inquiry, order the Local Authority to proceed (section 31 (2)), and such order is binding on the Local Authority.

### *Authority of County Council.*

In London (section 45) and in the rural districts, but not in Scotland (section 96 (16)), a different procedure must be followed. Where any of the bodies or persons entitled to complain, that is, any bodies who are entitled to make a representation, have complained, either to the Local Authority, or to the Medical Officer of Health, or where a county Medical Officer of Health has made a representation,

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<sup>1</sup> There is no definition given of a householder in the Acts, but it would not include a lodger.

which has been forwarded by the county council to the Local Authority, or where the Medical Officer or in London any county council's Medical Officer has made a representation, the Local Authority, that is, the borough council or the rural district council, as the case may be, are required to report to the county council such particulars as they may require respecting any proceedings taken by them, with reference to such representation, complaint, information, or dwelling-house.

In London the Medical Officer's report is considered a special report, and copies must be sent to the Local Government Board and to the county council.<sup>1</sup>

When the county council (section 45 (2) (a)) are of opinion that proceedings as respects any dwelling-house should be taken to obtain a closing order, and they have given reasonable notice, not being less than a month, in writing to the authority, and they consider the authority have failed to institute or properly prosecute proceedings, the county council may resolve accordingly, whereupon the powers of the authority vest in them, and if a closing order is made, and is not disallowed on appeal,<sup>2</sup> the expense incurred by the county council, including any compensation paid,<sup>3</sup> becomes a simple contract debt due

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<sup>1</sup> Sanitary Officers' (London) Order, December 8th, 1891.

<sup>2</sup> *Infra*, appeal, p. 163.

<sup>3</sup> In respect of obstructive buildings, *infra*, p. 166.

to them by the authority (section 45 (3)). This debt may be defrayed by the district authority as part of their expenses of the execution of the Act.<sup>1</sup>

The county council (section 45 (4)), and any of their officers, possess for the purpose of carrying out these duties the same rights of admission as the district authority, or their officers possess for the purpose of the execution of their duties under the enactments relating to Public Health,<sup>2</sup> and a justice may make the like order for enforcing admission. They also possess generally all the powers that the Local Authority possesses.

### *Procedure to obtain a Closing Order.*

When a closing order is desired under the Housing Acts (section 32 (2)), proceedings must be taken for the express purpose. They may be taken whether the house is occupied or not.<sup>3</sup> Proceedings, as under the Public Health Acts,<sup>4</sup> commence with the service of a notice, called the abatement notice, and such notice under the Public Health Acts calls on the person by whose act or sufferance the nuisance arises or continues, or where he cannot be found the

<sup>1</sup> A similar procedure exists where a closing order has been made, *infra*, p. 143, or in the case of an obstructive building, *infra*, p. 157.

<sup>2</sup> Public Health Act, 1875, section 102 . . . section 305, *supra*, p. 130.

Public Health (London) Act, 1891, *supra*, p. 127.

<sup>3</sup> *Robertson v. King*, 1901, 2 K.B. 70 L.J. K.B. 630.

<sup>4</sup> Public Health Act (London) 1891, section 4.

Public Health Act, 1875, section 4. *See also* schedule applying these Acts, p. 325.

Public Health Act, Scotland, 1897.

Public Health Act, Ireland, 1878.

owner or occupier, to abate the nuisance. But under the Housing Acts the notice can only be served on the owner or occupier, but now, where in the opinion of the Local Authority (3 Edward 7. c. 39. s. 8), the house is not reasonably capable of being made fit for habitation, or is in such a state that its occupation should be immediately discontinued, an abatement notice is now unnecessary, and a closing order can be applied for at once.<sup>1</sup> In other cases the occupier or owner<sup>2</sup> must be served. Where the county council step in notices are served by the county council.<sup>3</sup>

### *Service of Notice.*

A notice requiring abatement of a nuisance must be given by the Local Authority, or by their special direction;<sup>4</sup> it cannot be given by an officer on his own initiative. The previous approval of a London vestry was, however, not held essential where a committee had been originally authorised to instruct officers to give notice.<sup>5</sup> The notice is Form A. in the Fourth Schedule.<sup>6</sup> It does not specify the works which are required to be executed. In proceedings taken under the Public Health Act, 1875, however, the works specified must be stated,<sup>7</sup> and a notice not

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<sup>1</sup> This provision applies only to England and Wales.

<sup>2</sup> Owner, *infra*, p. 141.

<sup>3</sup> *Supra*, p. 136, *infra*, p. 272.

<sup>4</sup> Vestry of St. Leonard's, Shoreditch, *v.* Holmes, 50 J.P. 132.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Infra*, p. 350.

<sup>7</sup> Reg *v.* Wheatley, 16 Q.B.D. 34.

specifying the works to be executed was held to be bad.

Under the Public Health (London) Act, 1891, the Sanitary Authority may, if they think it desirable (but not otherwise), specify the works to be executed.

The notice must be in writing, and signed by the clerk or his lawful deputy (section 86 (2)). It is the duty of the clerk to serve notice on the owner when his residence or place of business are known to the Local Authority and are within the district, (1) by giving it him, (2) or to some inmate of his residence or place of business for him. In any other case service may be effected by registered letter addressed to the owner at his residence or place of business.

Where neither the owner nor his residence nor his place of business are known (section 49 (2)), service may be effected by the clerk serving the notice by leaving it addressed to the owner with some occupier of the dwelling-house, or, if there is no occupier, by causing it to be posted on some conspicuous part of the dwelling-house. Notice served on the agent of the owner (section 49 (3)) is deemed notice to the owner.

The notice may be served on an owner now (3 Edward 7. c. 39. s. 13 (1)) by registered letter addressed to the owner or his agent at his usual or last known residence or place of business.<sup>1</sup>

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<sup>1</sup> This applies only to England and Wales.



Where an owner (section 47 (1)) is not the person in receipt of the rents and profits, he may give notice of his ownership to the Local Authority. Thereupon the Local Authority must give such owner notice in writing of any proceedings taken by them in relation to the house.

A similar provision exists in Scotland (section 97 (1)).<sup>1</sup>

### *Owner.*

Under the Housing Acts the expression "owner" (section 29), in addition to the definitions given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under Part II. of the Act, except persons holding or entitled to the rents and profits of such premises for a term of years of which twenty-one years do not remain unexpired.

Under section 3 of the Lands Clauses Act of 1845:—

"Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word 'owner' shall be understood to mean any person or corporation who under the provisions of this or the special Act would be enabled to sell and convey lands to the promoters of the undertaking."

By section 7 all parties seised, possessed of, or entitled to any such land<sup>2</sup>, or any estate or interest therein, may sell, and particularly "corporations, tenants in tail or for life,

<sup>1</sup> *Infra*, p. 299.

married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life or for lives or for years, or any less interest."

Under these definitions of owner there may be several persons who could claim to be owners. Thus, where an owner in fee simple has leased his premises for ninety-nine years, and the lessee has leased for ninety-nine years less three days, and the under-lessee, who is in possession of the rents and profits, has mortgaged the premises, the freeholder, the lessees, and the mortgagee would all be owners.

As probably the under-lessee would be served as in possession of the rents and profits, the above-mentioned power to inform the Local Authority is given to every owner to protect his interests.<sup>1</sup>

Under the Public Health (London) Act<sup>2</sup> the expression owner means the person for the time being receiving the rack rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack rent.

In applying for a closing order under the Housing Acts care should be taken to serve the owner as

<sup>1</sup> *Supra*, p. 141.

<sup>2</sup> 1891.

defined under the Housing Acts,<sup>1</sup> and not under the Public Health (London) Act.

Assuming that proceedings for a closing order are necessary<sup>2</sup> after service of the abatement notice, because the works specified to be done are not executed, or when no abatement notice has been served by reason that the house could not be made fit for human habitation, complaints may be laid before a police magistrate or before justices to obtain a closing order.<sup>3</sup>

A question to be considered is, do the enactments in the schedule<sup>4</sup> now regulate the proceedings in London and Scotland?

Since the Sanitary Act of 1866 and the Nuisances Act, 1855,<sup>5</sup> affecting London are repealed, are they still available for the purpose of making an order? A similar question arises under the Public Health (Scotland) Act, 1867, also repealed.<sup>6</sup> The repealing Act—the Public Health (London) Act, 1891<sup>7</sup> (section 142 (7))—enacts that where in any enactment . . . in force at the time of the passing of this Act . . . any Act or any provisions of an Act

<sup>1</sup> *Osborne v. The Skinners Company*, 60 L.J.M.C. 156.

<sup>2</sup> This provision applies only to England and Wales.

<sup>3</sup> In Scotland offences under the Act punishable on summary conviction may be prosecuted and fines recovered before the sheriff or two justices or, in burghs, before the magistrate in manner provided by the Summary Jurisdiction (Scotland) Acts, and all necessary jurisdiction is thereby conferred on such sheriff or two justices or any two magistrates of a burgh.

<sup>4</sup> See schedule, p. 325.

<sup>5</sup> 29 & 30 Vict. c. 90. 18 & 19 Vict. c. 121.

<sup>6</sup> Schedule 4.

<sup>7</sup> *Supra*, p. 127, as to closing orders under the Public Health Act, London, 1891.

are mentioned or referred to which relate to London, and are repealed by this Act, such enactment . . . shall be read as if this Act were therein referred to instead of such repealed provisions and as if a sanitary authority under this Act were substituted for any nuisance authority mentioned in such repealed provisions.

Section 193 of the Public Health (Scotland) Act contains a similar provision.

It would seem, therefore, that these sections (that is, the sections under the Sanitary Act and Nuisances Act, and the Public Health (Scotland) Act, are no longer operative, and that the machinery of the Public Health (London) Act, 1891, and the Public Health (Scotland) Act, 1897, must be employed. Steps to obtain a closing order should, therefore, be taken under the Public Health (London) Act, if it is desired to proceed under the Public Health Act, or under the Housing Act, utilising the procedure prescribed by the Public Health (London) Act.<sup>1</sup> Similar considerations apply to Scotland. The advisability of seeking an order under the Housing Act or the Public Health Acts will depend upon the object sought. Under the Housing Act a closing order may be a preliminary to making a reconstruction scheme, and the purchase of the site by the Local Authority.

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<sup>1</sup> 1891.

But a more important difficulty arises on account of the definition of "owner," as the owner, under the Housing Act,<sup>1</sup> is not the owner under the Public Health Acts.<sup>2</sup> Care must, therefore, be taken that the owner under the Housing Act must be served if it is desired to obtain a closing order under this Act.

Assuming that a closing order is made, it may be determined by a subsequent order, when steps have been duly taken to render the house fit for habitation (section 33 (1)); but of course there are cases where a house could not be rendered fit for habitation. In such cases steps should be taken to obtain a demolition order (*infra*, p. 153). An owner not in possession, as, for instance, a reversioner, where default is being made in the execution of the works, can apply to a court of summary jurisdiction, and on his application, if it appears that his interests will be prejudiced by such default, the court may make an order empowering the applicant forthwith to enter on the dwelling-house and within the time fixed by the order execute the works (section 47 (2)).

In Scotland the superior of any lands and heritages may give notice of his right of superiority to the Local Authority. He is then entitled to notice of the proceedings (section 97 (1)). When it appears to the

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<sup>1</sup> *Supra*, p. 141.

<sup>2</sup> *Supra*, p. 142.

sheriff, on the application of such superior, that default is being made in the execution of works, in respect of which a closing order has been made, and that the interests of the applicant will be prejudiced by such default, he may make an order empowering the applicant to enter on the land and within the time fixed by the order to execute the works (section 97 (2)). The sheriff may also enlarge the time for the execution of the works, but notice must be given to the Local Authority (section 97 (3)).

Where an enlargement (section 47 (3)) of the time allowed under any order for the execution of any works is required from a court of summary jurisdiction, notice of the application (section 47 (4)) must be served on the Local Authority before an order can be made.

The application should be made in open court,<sup>3</sup> and it is advisable to give notice to owners of prior interests so that they can attend if they desire.

As a rule (section 48) an entry by a lessor puts an end to a lease, but under the Housing Act nothing shall prejudice or interfere with the right or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any dwelling-house in respect of which an order is made by a Local Authority; and if

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<sup>3</sup> 42 & 43 Vict. c. 49. s. 2.

an owner is obliged to take possession of any dwelling-house to comply with an order, his taking possession will not affect his right to avail himself of any such breach, non-observance, or non-performance of any covenant that may have occurred prior to his taking possession.

Therefore he could sue on a repairing covenant, claiming the damage that he had been put to by a lessee or tenant's breach of covenant notwithstanding an entry.

When an occupier (section 51 (1)) prevents an owner from carrying into effect the necessary repairs after he has given notice of his intention, a court of summary jurisdiction may make an order ordering such persons to permit to be done on such premises all things requisite for carrying into effect with respect to such dwelling-house the provisions of Part II.

Failure to obey an order (section 51 (2)) of this description at the expiration of ten days from its service renders the occupier liable to a fine not exceeding twenty pounds on summary conviction for each day the failure continues.

A court of summary jurisdiction (section 32 (1) and section 90) may inflict a penalty not exceeding twenty pounds on the making of a closing order. The fine is recoverable under the Summary Jurisdiction Acts.

A closing order is made according to Form C. in the Fourth Schedule.<sup>1</sup> The form, however, in Ireland is varied (59 & 60 Vict. c. 11. section 2).

Notice of a closing order (section 32 (2)) must be served on every occupying tenant. The tenant and his family must obey the notice within the period prescribed in the notice, not being less than seven days after the service of the notice; otherwise, he is liable to a penalty not exceeding twenty shillings a day during his disobedience to the order.

Where default (3 Edward 7. c. 39. s. 10) is made by the occupying tenant, without prejudice to the enforcement of any penalty, possession of the house may be obtained whatever its value or rent by, or on behalf of the owner by a Local Authority, either under sections 138 to 145 of the County Courts Act, 1888,<sup>2</sup> or under the Small Tenements Recovery Act, 1838<sup>3</sup> as in the cases therein provided for, and in

<sup>1</sup> Forms are given in the Fourth Schedule, but the Local Government Board may by order prescribe forms in substitution, and they shall have effect as if the forms so prescribed were referred to therein in lieu of the forms in that schedule. 3 Edward 7, c. 39, s. 8 (2).

*Infra*, p. 348.

<sup>2</sup> These sections empower a landlord to recover possession of small tenements where the lease has expired or been determined by notice (section 138). The limit there is fifty pounds, but this does not apply. Section 139 gives a right to enter where neither the rent nor value exceed fifty pounds, and there is a right of entry at law if half a year's rent is in arrear. Section 140, a sub-tenant served with a summons must give immediate notice to his landlord who may come in and defend. Section 141 prescribes methods of service of summonses. Section 142, warrants to bailiffs, justifies the bailiff in entering between 9 a.m. and 4 p.m. Section 143, warrants one in force for three months and no longer. Section 144, judges, registrars, bailiffs, and other officers are not liable to actions on account of proceedings. Section 145, where landlord has a lawful title he is not adjudged a trespasser for any irregularity.

<sup>3</sup> 1 & 2 Vict. c. 74.



either case may be obtained as if the owner or the Local Authority were the landlord. This provision does not apply to Scotland or Ireland.

Expenses incurred by the Local Authority (3 Edward 7. c. 39. s. 10) in obtaining possession in this way may be recovered from the owner as a civil debt in manner provided by the Summary Jurisdiction Acts.<sup>1</sup>

The Court on making a closing order (section 33 (3)) may allow a reasonable amount to the tenant for removal expenses. These become a civil debt due from the owner and are recoverable summarily.<sup>2</sup> When the tenant occupier would not be before the court, notice in fairness should be given to him so that he may ask, if necessary, for his removal expenses.

### *Charging Orders.*

An owner, who has executed any works required to be executed by an order of a Local Authority (section 36 (1)), is entitled to a charging order.

A charging order cannot be obtained where the work is executed under an order made by a court of summary jurisdiction. The order in respect of which it can be obtained must be the order of the Local Authority.

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<sup>1</sup> 42 & 43 Vict. c. 49, s. 6.

<sup>2</sup> Under the Summary Jurisdiction Acts.

The orders of a Local Authority in respect of which a charging order can be obtained are as follows :—

An order for the execution of works when a Local Authority (section 33 (3) (4)) resolves after disobedience to a closing order that it is expedient to order the demolition of a building and the owner undertakes to execute the works.<sup>1</sup> The orders are referred to in the note. The order given in the text is the principal one meant, since it is more than doubtful if an abatement notice amounts to an order.

The owner who has executed the work is the owner who is entitled to an order.

The Local Authority grants it.

Application has to be made to the Local Authority, and the owner is required to produce the certificate of the authority's surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for the costs, charges, and expenses of the works.

If the authority are satisfied of the execution of the work, that the costs, charges, and expenses have been properly incurred, they shall make an order charging on the dwelling-house an annuity to repay the amount (section 36 (1)).

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<sup>1</sup> The orders a Local Authority can make in addition to the order in the text are orders for demolition; orders to abate; orders granting a charge; orders abating an obstructive dwelling. As a dwelling-house includes the site, possibly a charging order might be made where the works executed were of a destructive nature such as the demolition of the building.

The annuity charged is a sum of six pounds for every hundred pounds of the amount, and so on in proportion for any less sum. It commences from the date of the order, and is payable for a term of thirty years to the owner named in the order, his executors, administrators, or assigns (section 36 (2)). Any party aggrieved by it may appeal.<sup>1</sup>

It is recoverable (section 36 (3)) by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the dwelling-house by the owner.

It should be made in the form marked A. (section 36 (4)) in the Fifth Schedule,<sup>2</sup> or as near to it as the circumstances of the case will admit. Its benefits may be transferred in like manner as mortgage or rentcharge may be transferred. Any transfer may be in the form marked B. in the Fifth Schedule to the Act, or in any convenient form.<sup>3</sup>

The liability is not placed on any person, but the premises are charged. The result is that the tenant in possession is liable during the continuance of his interest.<sup>4</sup>

A rentcharge is recoverable by action.<sup>5</sup>

The order must be in writing and under the seal of the Local Authority, and like other orders made by

<sup>1</sup> See Appeals from Orders, *infra*, p. 163.

<sup>2</sup> *Infra*, p. 161.

<sup>3</sup> *Infra*, p. 332.

<sup>4</sup> Hyde v. Berners, 63 J.P. 453.

<sup>5</sup> Thomas v. Sylvester, L.R. 8, Q.B. 368.

them, duly authenticated by the clerk or his lawful deputy.

In Scotland, however, when the Local Authority have not a seal, it may be authenticated by the signature of any two or more members of the Local Authority and of their clerk or his lawful deputy (section 96 (15)).

A similar provision exists in Ireland (section 98 (10)).

The charge (section 37 (1)) is a charge on the dwelling-house specified in the order. It ranks in priority over all existing and future estates, interests, and incumbrances, with the exception of quit rents and other charges incident to tenure, tithe commutation rentcharge, and any charge created under any Act authorising advances of public money; and, where more charges than one are charged under the Housing Act on a dwelling-house, the charges between themselves take order according to their respective dates.

In Scotland the reference to quit rents and other charges incident to tenure and to tithe commutation rentcharge shall be read as applicable to feu duties, casualties, and teinds (section 96, subsection 13).

A charging order (section 37 (2)) is in itself conclusive evidence that all notices, acts, and proceedings with reference to the obtaining the order or the making of the charge have been duly served, done,

and taken, and that such charge has been duly created, and that it is a valid charge on the dwelling-house declared to be subject thereto.

Charging orders in Middlesex and Yorkshire must be registered in like manner as if the charge were made by deed by the absolute owner of the dwelling-house.

In Scotland a charging order must be recorded in the appropriate register of sasines.

In Ireland it must be registered in the office for registering deeds, conveyances, and wills in Ireland.

Copies of the charging order (section 37 (4)), the certificate of the surveyor or engineer, and of the accounts as passed by the Local Authority, certified to be true copies by the clerk, six months after the date of the order, must be deposited with the clerk of the peace of the county in which the dwelling-house is situate. The clerk of the peace files them and records them.

### *Demolition Order.*

A demolition order (section 33 (1)) follows on a closing order.

Where a closing order has been made<sup>1</sup> and not determined by a subsequent order, whether made at the instance of the Local Authority, or the County Council in London and the rural districts,<sup>2</sup> when

<sup>1</sup> *Supra*, p. 124.

<sup>2</sup> *Supra*, p. 136. *Infra*, p. 272.

the county council are exercising the jurisdiction of borough or rural district councils the procedure is as follows: When the Local Authority are of opinion that the dwelling-house has not been rendered fit for habitation, and that the necessary steps are not being taken with due diligence to make it fit, and that the continuance of any building being or being part of the dwelling-house is dangerous or injurious to the health of the public or the inhabitants of the neighbouring dwelling-houses, they shall resolve<sup>1</sup> that it is expedient to order the demolition of the building. The effect of making a demolition order is to put an end to the jurisdiction of the magistrate to determine a closing order.<sup>2</sup>

Notice of the resolution must then be served section 33 (2) on the owner.<sup>3</sup> The notice must specify the time and place appointed by the Local Authority for the further consideration of the resolution, not being less than a calendar month<sup>4</sup> after service of the notice. The owner is at liberty to attend and state his objections to its demolition.<sup>5</sup>

On consideration of the resolution and objections unless the owner (section 33 (3)) undertakes to execute the necessary works to render it fit for habitation,

<sup>1</sup> *Supra*, p. 12.

<sup>2</sup> *Reg. v. De Rutzen and The Vestry of Chelsea*, 9 T.L.R. 41.

<sup>3</sup> *Supra*, p. 141.

<sup>4</sup> 52 & 53 Vict. c. 63, s. 3.

<sup>5</sup> The County Council in London and rural districts can make this order (section 45).

the Local Authority must order its demolition,<sup>1</sup> but they must be satisfied of its expediency; that is, that its continued existence is dangerous to the public health or to the inhabitants of neighbouring houses.

If the owner (section 33 (4)) undertakes to execute the works the Local Authority may order their execution within such reasonable time as is specified in the order. If the works are not completed within the time or any extended time allowed by the Local Authority or a court of summary jurisdiction, the Local Authority shall order the demolition of the building.

The order (section 86 (1)) must be in writing and made under seal and authenticated by the signature of the clerk to the Local Authority or his lawful deputy. In Scotland and Ireland it is not necessarily under seal.<sup>2</sup> As to appeals against an order, see p. 163, *infra*.

Within three months (section 34 (1)) after service<sup>3</sup> of the order, the owner is required to proceed to take down and remove the building. If he make default the Local Authority must take it down and remove the building and sell the materials, and after deducting the expenses incident thereto must pay over the balance of money, if any, to the owner.

<sup>1</sup> *Vale v. Southall-Norwood Urban District Council*, 60 J.P. 131.

<sup>2</sup> *Infra*, pp. 299, 302.

<sup>3</sup> If not appealed against, *infra*, p. 164.

In Scotland the superior may apply to the sheriff when default is being made in the demolition,<sup>1</sup> who may make necessary orders as in the case where default is being made in the execution of works required by a closing order. In England and Ireland application is made to a court of summary jurisdiction (section 47 (2)).

When the amount realised<sup>2</sup> (3 Edward 7. c. 39. s. 9) by the sale of the materials is insufficient to cover the expenses incident to the taking down and removal the Local Authority may recover the deficiency from the owner as a civil debt in manner provided by the Summary Jurisdiction Acts<sup>3</sup> or under the provisions of the Public Health Acts relating to private improvement expenses.<sup>4</sup>

On the land or any part of the land on which the building stood, no house, building, or other erection must be erected which will be dangerous or injurious to health, and if a house, building, or other erection is erected contrary to this provision the Local Authority may order the owner to abate it, and in the event of his non-compliance they may pull it down (section 31 (2)). The owner in this case may not be the same owner, he may be an owner who has purchased the site from an owner who pulled down the building under a demolition order.

<sup>1</sup> *Supra*, p. 155.

<sup>2</sup> *Supra*, p. 155.

<sup>3</sup> *Supra*, p. 16.

<sup>4</sup> In urban districts under sections 213, 214, 215 of the Public Health Act (38 & 39 Vict. c. 55.). In rural districts under section 232 or alternatively under section 257.



*Authority of County Council.*

The authority that county councils possess in London and the rural districts when a representation, complaint, or information has been made to the Local Authority or the Medical Officer of Health in cases where a closing order ought to be made have already been referred to (*supra*, p. 136). On similar representations they are entitled, on the adoption of a procedure analogous to that already detailed, to pass a resolution to the effect that they consider the district authority have failed to make a demolition order, whereupon the power of making the order vests in them. The provision with reference to expenses, compensation, and powers of entry apply, as in the case where the county council take steps to obtain a closing order (section 45).

*Obstructive Buildings.*

An obstructive (section 38) building,<sup>1</sup> is one which, "although not in itself unfit for human habitation,"<sup>2</sup> is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects :—

- "(a) It stops ventilation or otherwise makes or conduces to make such other buildings to

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<sup>1</sup> *Supra*, p. 111, as to meaning of building.

<sup>2</sup> *Supra*, p. 125.

be in a condition unfit for human habitation, or dangerous<sup>1</sup> or injurious to health,<sup>2</sup> or

“(b) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings.”

It is the duty of the Medical Officer of Health,<sup>3</sup> where an obstructive building exists, to make a representation in writing to the Local Authority, giving the particulars, and stating that in his opinion it is expedient that the obstructive building should be pulled down.

Any four (section 38 (2)) or more inhabitant householders of a district may make a representation to the like effect as a Medical Officer of Health, so can a parish council.<sup>4</sup>

The Local Authority (section 39 (3)) are required to cause a report to be made to them, respecting the circumstances of the building, the cost of demolition and the acquiring of the land. On receipt of the report they must consider the representation, and the report. If they determine to proceed, a copy of the representation and report must be

<sup>1</sup> *Supra*, p. 125.

<sup>2</sup> *Supra*, p. 125.

<sup>3</sup> The Medical Officer in London is required to send a copy of his representation to the Local Government Board and the County Council Sanitary Officers (London) Order, Dec. 8th, 1891.

<sup>4</sup> 56 & 57 Vict. c. 73, s. 6 (2). *Supra* as to who can make a representation.

given to the owner of the lands on which the building stands, with a notice in writing signed by the clerk, of the time and place appointed by the Local Authority for its consideration.

The owner (section 38 (3)) can attend at the place appointed and state his objections. After hearing the objections the Local Authority may allow them, or may order that the building be pulled down.

The order (section 86 (1)) for pulling down must be under seal, and signed by the clerk or his lawful deputy. It is appealable.<sup>1</sup> If the appeal is made and fails, or if it is abandoned, the Local Authority is authorised to purchase the site at any time within a year from the date of the order, or if it is appealed against from the date of its confirmation.

In urban districts, the Local Authority's discretion is unfettered, they can proceed or not; but in London and the rural districts the county councils have certain controlling powers.

### *Authority of County Council.*

Where the householders or parish council or any London Medical Officer of Health or the Local Authority's Medical Officer of Health have complained or made a representation to the Local Authority, or to the Local Authority's Medical Officer of Health, or

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<sup>1</sup> See Appeal, *infra*, p. 163.

where the County Council's Medical Officer of Health's report has been forwarded to the Local Authority, the complaint, representation, or information, as in the case of a failure to deal with a house unfit for human habitation, must be forwarded by the Local Authority to the county council, who can proceed in place of the Local Authority. The procedure is similar to that where the Local Authority decline or neglect to apply for a closing order.<sup>1</sup> The county council pass a resolution.<sup>2</sup> They give notice to the owner, hear his objections, and, if they choose, make an order for the pulling down of the obstructive building.<sup>3</sup> Their order is appealable.<sup>4</sup>

The purchase of the lands on which the obstructive building stands it has been already stated must be made within a year from the date of the order by the Local Authority, unless appealed against, when time runs from the date of the order dismissing the appeal; but before a Local Authority can obtain the lands they must serve notice of their intention on the owner or owners to purchase them. The compulsory clauses of the Lands Clauses Act apply to compulsory acquisition.<sup>5</sup> The Local Authority are deemed promoters of the undertaking. Part II. of the Housing Act is deemed the special Act. Notice to purchase must be given. Under section 18 of

<sup>1</sup> *Supra*, p. 137.

<sup>2</sup> *Supra*, p. 12.

<sup>3</sup> Sections 16 to 18 of the Lands Clauses Consolidation Act, 1845, as modified by the Housing Act.

<sup>4</sup> *Supra*, p. 157.

<sup>5</sup> *Infra*, p. 163.

the Lands Clauses Act this notice requires to be served upon all owners<sup>1</sup> or parties interested in the lands who are able to sell and convey. It need not, however, be served on persons claiming easements, such as a right of support from the obstructive dwelling, since their right to compensation arises under section 68 of the Lands Clauses Consolidation Act of 1845.

The owner of an obstructive building<sup>2</sup> is in a different moral position to the owner of a house closed as unfit for human habitation. Therefore he cannot be compelled to pull it down, nor can the Local Authority pull it down at his expense, nor are they able to purchase the site on which it stands if the owner objects. For, within a month after he has received notice to treat for the sale of the building and the land on which it stands, he can declare that he desires to retain the site, and undertakes either to pull down the building or to allow the Local Authority to do it. He is then enabled to retain the site, and if the Local Authority pulls it down he is entitled to compensation for the pulling down (section 38 (5)). The provisions respecting compensation are dealt with hereafter.<sup>3</sup> When the building is pulled down the owner is prohibited from building on it or any part of it a house, building, or other

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<sup>1</sup> *Supra*, p. 112.

<sup>2</sup> See as to meaning of building. *supra*, p. 157.

<sup>3</sup> *Infra*, p. 166.

erection which will be dangerous or injurious to health. If he does the Local Authority may at any time call upon him by order to abate or alter it. If he declines, they may pull it down at his expense (section 38 (10)). If the Local Authority purchases the site they must keep it as an open space, or at any rate such part of it as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by the existence of such obstructive building. With the consent of the Local Government Board and in London, with the consent of the Home Secretary, they may sell any portion not required for this purpose (section 38 (11)). Any land acquired may be dedicated to the public as a highway or other public place (section 38 (12)).

The proceeds of a sale must be applied to any purpose, including repayment of borrowed money, for which capital money may be applied, and which is approved by the Local Government Board (section 82).

Land and premises acquired under the Artizans' Dwellings Acts, 1868 to 1885, and vested in the Local Authority, but not dwelling-houses so acquired are held as if they had been acquired as the site of an obstructive building, but may with the consent of the authority authorised to consent be appropriated for the purposes of Part III., that is, to provide lodging-house accommodation. Dwelling-houses so acquired are held as if they had been

acquired for the purposes of Part III., that is, for lodging houses or working-class dwellings (section 102).

Any owner is entitled to apply to a court of summary jurisdiction where delay has been made in claiming the site in the same way as where default is made in executing works required to be executed in respect of which a closing order has been made.<sup>1</sup>

A similar application can be made to the sheriff in Scotland.<sup>2</sup>

Closing orders may be made as prescribed in the Schedule Form C., but they may be altered in Ireland so as to be in conformity with the forms ordinarily used in Ireland under the Petty Sessions (Ireland) Act, 1851, and need not be used under seal.

### *Appeals from Orders of Local Authorities.*

Certain orders of the Local Authority (section 35) are appealable. These are:—

An order (section 33 (3 & 4)) for demolition or execution of the works.<sup>3</sup>

An order (section 34 (2)) to abate, that is, an order made when a building has been pulled down, and a building or erection dangerous or injurious to health is erected on the site.

An order (section 38 (3)) to pull down an obstructive building.

<sup>1</sup> *Supra*, p. 145.

<sup>2</sup> *Supra*, p. 145.

*Supra*, p. 153.

A charging order (section 36 (1)).

An order (section 38 (10)) where the owner retains the site and builds a house, building, or other erection which will be dangerous or injurious to health or an obstructive building.

Any person aggrieved by any order may appeal to a court of quarter sessions.

Notice of appeal acts as a stay. No work shall be done nor proceedings taken till the appeal is determined or ceases to be prosecuted.

Notice of appeal (section 35) from an order may be given within a calendar month after notice of the order has been served<sup>1</sup> on any such person. The appeal is regulated by section 31 of the Summary Jurisdiction Act, 1879, with the necessary modifications as if the order of the Local Authority were an order of a court of summary jurisdiction. The court at the request of either party must state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court (section 35 (2) (b)). *See also* section 40, Summary Jurisdiction Act, 1879.

Appeals in Scotland from orders of the Local Authority lie to the sheriff,<sup>2</sup> and the same procedure applies as on appeal from the sheriff substitute to the sheriff, but with the same provisos as apply to the appeal in England from the order of the

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<sup>1</sup> Any of the above orders.

<sup>2</sup> The expression quarter sessions means the sheriff,



Local Authority to a court of quarter sessions (section 95 (3)). In Ireland, quarter sessions means, in towns and boroughs where there are separate quarter sessions the quarter sessions of the towns and boroughs; where there are no separate quarter sessions the quarter sessions of the division of the counties in which such towns or boroughs are situate (section 98 (3)).

The provisions of section 24 of the Petty Sessions (Ireland) Act, 1851, respecting appeals from courts of summary jurisdiction authorised by that section and any enactment amending the same shall in Ireland apply in the case of appeals from an order of a Local Authority to a court of quarter sessions as if such order was an order of a court of summary jurisdiction, but with the same provisoes as apply under this Act in the case of such an appeal in England (section 98 (4)).

### *Appeals from Justices or Magistrates.*

There is no appeal against a closing order expressly provided under the Housing Acts, but section 269 of the Public Health Act, 1875 (an enactment referred to in Schedule 3), gives a right of appeal to quarter sessions. Section 6 (2) of the Public Health (London) Act, 1891, provides that there shall be no appeal to quarter sessions against a nuisance order unless it is, or includes, a prohibition or closing

order, or requires the execution of structural works. This Act repealed the Nuisances Removal Act, which contained a right of appeal, although the section conferring it does not appear in Schedule 3.

Since section 32, subsection (2) of the Housing Act of 1890 states that the enactments respecting an appeal from a closing order apply to the imposition of a penalty as well as to a closing order, it would seem that an appeal, although not expressly given by any of the sections given in Schedule 3, lies to quarter sessions under section 269 of the Public Health Act, 1875, and section 6 (2) of the Public Health (London) Act, 1891.

In Scotland, offences under the Act punishable on summary conviction may be prosecuted and fines recovered before the sheriff or two justices, or in burghs before the magistrates in manner provided by the Summary Jurisdiction (Scotland) Acts, and all necessary jurisdiction is conferred on such sheriff or the justices or any two magistrates of a burgh (section 95 (4)).

### *Compensation.*

Compensation is payable (1) in respect of lands acquired under a reconstruction scheme ; (2) in respect of the acquisition of an obstructive building and the site on which it stands ; (3) or where the owner of an obstructive building retains the site and the building is pulled down ; (4) claims may also be made

for lands or interests therein injuriously affected under section 68 of the Lands Clauses Act of 1845. The Lands Clauses Acts, other than the compulsory clauses, except in so far as they are modified by Schedule II. to the Housing Act and the Act itself, as has already been shown,<sup>1</sup> apply to lands taken under an improvement scheme, and they also apply to the acquisition of lands taken for a reconstruction scheme subject to certain modifications, but Schedule II. has no application.

In the case of a reconstruction scheme the Local Government Board can authorise the incorporation in a Provisional Order of the Lands Clauses Acts, when it would seem that the whole Acts would apply subject to the modifications introduced by the Housing Act, but in the case of the purchase of obstructive buildings, since no order can be made incorporating the Lands Clauses Acts, the method of compensation must be looked for under the Housing Acts, and only such sections of the Lands Clauses Acts as are specially referred to have any application. The same rule also applies to a Provisional Order for a reconstruction scheme which does not incorporate the Lands Clauses Acts. A reference to any sections of the Lands Clauses Act, 1845, must be construed to mean a reference to the corresponding sections of the Lands Clauses Consolidation (Scotland) Act, 1845 (section 94 (1)).

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<sup>1</sup> *Supra*, p. 55.

In respect of obstructive buildings the whole of the compulsory provisions of the Lands Clauses Acts apply,<sup>1</sup> subject to the provisions of the Housing Act (section 38 (4)). The amount of compensation payable in respect of the pulling down of an obstructive building and the purchase of the site in case of difference is settled by arbitration under these clauses, subject to certain provisions applying to arbitration under Part II. of the Housing Act (section 38 (6)).<sup>2</sup>

Amongst the modifications introduced in the Lands Clauses Act is the provision that an owner of a house or manufactory cannot insist on his entire holding being taken where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator, be severed from the remainder of the house without material detriment thereto; but compensation may be awarded for severance in addition to the value of the part<sup>3</sup> (section 38 (7)).

Again, where the arbitrator is of opinion that the demolition of an obstructive building adds to the value of buildings which have been by its existence obstructed, he must apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase

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<sup>1</sup> Sections 16-68.

<sup>2</sup> *Infra*, p. 173.

<sup>3</sup> *Supra*, p. 72.

in value of the other buildings amongst such other buildings respectively (section 38 (8)).

But where the owner of the other buildings is also owner of the obstructive building, the arbitrator in assessing compensation must have regard to and make allowance in respect of the increased value given to other dwelling-houses by the alteration or demolition of the obstructive building (section 41 2 (b)), and no apportionment must be made.

Where, however, the owner is only the lessor of the other buildings, the apportionment, as he may only receive a remote benefit, should fall on the lessees, and the allowance deducted from the compensation should be proportionably diminished by reason of the slight benefit he receives.

When an apportionment is made the amount apportioned to each building by reason of the demolition is deemed a private improvement expense, and the Local Authority may make and levy improvement rates on the occupiers of such premises for the purpose of defraying the expenses.

The provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, as far as circumstances admit, apply as if they were incorporated in the Act (section 38 (8)). They apply to London (section 46 (1)), and the borough councils and the Common Council are deemed Urban Authorities.

*Private Improvement Expenses.*

Private improvement expenses are recoverable by Urban Authorities under section 213 of the Public Health Act, 1875, by a rate levied on the occupier. The rate is termed a private improvement rate. The rate is of such amount as will be sufficient to discharge such expenses, together with interest thereon, at a rate not exceeding five pounds per cent. per annum on such period, not exceeding thirty years, as the Urban Authority may in each case determine. Where the house is without an occupier, it is a charge on the premises payable by the owner so long as they are unoccupied.

The occupier is entitled to deduct from his rent three-fourths of the amount or (where he holds at a rent less than the rack rent) such proportion of three-fourths as his rent bears to the rack rent.<sup>1</sup>

In rural districts, by section 232 of the same Act, the Rural Authority can make and levy improvement rates in the same way as an Urban Authority.

Private improvement expenses, by section 257, as an alternative procedure, may be made, by order of the authority, payable by annual instalments.

The instalments may be recovered summarily from either the owner or the occupier, and may be deducted from the rent, if paid by the occupier, in the same way as a private improvement rate.

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<sup>1</sup> *Richards v. The Overseers of Kidderminster* (1896), 2 Ch. 212.

These provisions do not apply to Scotland. There the Local Authority are entitled to recover in a summary manner the amount apportioned to any building in respect of its increase in value by reason of the demolition of any obstructive building from the owner or occupier, according to their respective interests in such increase of value (section 91 (3)).

Disputes between the owner and occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator making the apportionment must be settled by two justices in manner provided by the Lands Clauses Acts, where the compensation claimed does not exceed fifty pounds (section 33 (9)).

The justices act under sections 22 and 24 of these Acts.

In London a police magistrate, elsewhere a stipendiary magistrate, has power to determine the question.

In Scotland the sheriff, in manner provided by the Lands Clauses Consolidation Act, 1845, in similar cases (section 91 (2)).

#### *Procedure on Arbitration under Reconstruction Schemes.*

The Local Government Board appoints the arbitrator. He is removable by them. On his death, removal, resignation, or incapacity, another may be appointed. Arbitration is not resorted to till failure

to arrive at an agreement has been ascertained. The Local Authority have power for this purpose to enter on and value the lands.<sup>1</sup> Notice is served on all parties interested, except the owners of easements.<sup>2</sup> Notice to treat is given by the Local Authority, and the owner must properly state the nature of his claim, otherwise he may lose his costs if an arbitration takes place. Where lands are injuriously affected or the Local Authority has made an entry, the owner must make a claim for compensation. The arbitrator is required to make a declaration before a justice which is annexed to the award.<sup>3</sup>

The Arbitration Act of 1889 applies to the arbitration. The arbitrator can examine witnesses on oath and call for the production of documents. When the award is made it must be delivered to the Local Authority, who are required to furnish a copy to the claimant and produce it for inspection. Nearly identical provisions to those already referred to<sup>4</sup> in Chapter I. with reference to the assessment of compensation in respect of houses taken under an improvement scheme govern the arbitrator's assessment. Thus the estimate of the value of the dwelling-house must be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the

<sup>1</sup> *Supra*, p. 65.  
<sup>2</sup> *Supra*, p. 27.

<sup>3</sup> *Supra*, p. 61.  
<sup>4</sup> *Supra*, p. 69.



nature and the condition of the property, and the probable duration of the buildings in their existing state, and the state of repair thereof, and without any additional allowance in respect of compulsory purchase<sup>1</sup> (section 41 (1) (2) (a)).

Reference has already been made to the allowance that may be deducted from the compensation payable to the owner of property where other property of his has been bettered by the pulling down of an obstructive building.<sup>2</sup> This principle also applies to a betterment arising from the alteration or demolition of any buildings by a Local Authority where dwelling-houses of the owner, whose buildings have been altered or demolished, have been benefited (section 41 (2) (b)).

The arbitrator is directed to receive evidence to prove—

- (1) That the rental of the dwelling-house was enhanced by reason of its use for illegal purposes, or from being so overcrowded as to be dangerous or injurious to the health of the inmates; or
- (2) That the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair; or,
- (3) That the dwelling-house is unfit and not reasonably capable of being made fit for human habitation.

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<sup>1</sup> *Gough v. The Mayor of Liverpool*, 65, L.T. (N.S.) 613.

<sup>2</sup> *Supra*, p. 169.

If the arbitrator is satisfied by such evidence, then the compensation should in (1), so far as it is based on rental, be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes, and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and in (2) the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and in (3) the value of the land and of the material of the buildings on it (section 41 (2 and 3)).

When the arbitration is concluded, the arbitrator may by one award settle the amount of the compensation payable in respect of all or any of the dwelling-houses included in a mere order or orders made by the Local Authority, but he may and must, if the Local Authority request him, make an award respecting a portion only of the disputed cases (section 41 (6)).

On payment or tender of the amount of compensation agreed or awarded to be paid, or on payment in the manner prescribed by the Lands Clauses Acts, the owner shall when required convey his interest in such dwelling-house as they may

direct. Where the owner cannot adduce a good title, the Local Authority may, if they think fit, execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Act (section 41 (4)).

See with reference to provisions of the Mortmain Acts (*supra*, p. 52), the Settled Land Act (*supra*, p. 50), Powers of Corporate Bodies (*supra*, p. 51), and Tenant's Removal Expenses (*supra*, p. 97).

### *Costs.*

Costs may be certified by the arbitrator where he thinks fit on the application of either party. They must be properly incurred, and are payable by the Local Authority (section 11 (8)), but no certificate shall be given where the arbitrator has awarded the same or a less sum than the Local Authority has offered before the appointment of the arbitrator. Nor when the claimant after due notice in his opinion failed to deliver to the Local Authority a statement in writing within such time, and containing such particulars respecting the compensation claimed as would have enabled the Local Authority to make a proper offer of compensation before the appointment of the arbitrator (section 41 (9)).

The arbitrator's award is final and binding on all parties (section 41 (11)), subject to the statement

of a special case, and to an excess of jurisdiction on the part of the arbitrator.<sup>1</sup>

If the amount certified is not paid by the Local Authority seven days after demand to the party entitled to receive it, it becomes recoverable as a debt with interest at five per cent. so long as it remains unpaid (section 41 (10)).

### *Expenses.*

The expenses of carrying out a reconstruction scheme, and in fact all expenses that a Local Authority is put to in carrying out the various matters referred to in this Chapter, are defrayed out of the local rates, notwithstanding any Parliamentary limit and the Local Authority have power to levy a rate (section 42 (1)). See as to these rates, Schedule I., Appendix I.

The expenses of a rural district council, other than the expenses incurred in and incidental to proceedings for obtaining a closing order, must be charged as special expenses on the contributory place in respect of which they are incurred (section 42 (2)).

The expenses of proceedings for obtaining a closing order are regulated by the Public Health Act under which the proceedings are taken; that is, they are payable as general expenses.

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<sup>1</sup> *Supra*, p. 94.

*Borrowing Powers.*

The borrowing powers are as follows :—

A Local Authority in England and Wales, outside London,<sup>1</sup> may borrow for the purpose of raising sums required for purchase money or compensation payable in like manner and subject to the like conditions as for the purpose of defraying the expenses of the execution by such authority of the Public Health Acts (section 43 (1)). The Housing of the Working Classes Act, 1891 (57 & 58 Vict. c. 55, s. i), confers additional borrowing powers for the purposes of a reconstruction scheme where the Local Authority are authorised to borrow by the scheme itself or the order sanctioning it.

*In the City of London.*—The local rate is the sewer and consolidated rate, which will be the security (*supra*, p. 101).

The Common Council may borrow for the purpose of raising sums of money required for purchase money or compensation payable under Part I. of the Act (*supra*, p. 103), and the London County Council may likewise borrow under Part I. for the same purpose (*supra*, p. 103).

The Metropolitan Borough Councils may borrow under the Metropolis Management Act, 1855. The provisions of Part I. with respect to borrowing (*supra*, p. 103) and sections 183 to 191 of the Metropolis Act apply and have effect accordingly (section 46 (2)). The London County Council may, if they think fit,

<sup>1</sup> See as to London, *supra*, p. 120.

lend money to the Metropolitan Borough Council (section 46 (3)). When the County Council refuses to sanction a loan an appeal lies to the Local Government Board (London Government Act, 1899 (1) (4)).

*In Urban Districts.*—Money may be borrowed on the security of the rate out of which the general expenses of the execution of the Public Health Acts are defrayed, generally the general district rate.

*In Boroughs.*—On the borough rate, or it may be a rate levied under a local Act.<sup>1</sup>

*In Scotland.*—On the Public Health General Assessment, and money may be borrowed in the same manner and subject to the same conditions as money may be borrowed for the erection of hospitals under the Public Health (Scotland) Amendment Act and any Acts amending the same (section 96 (2)), (59 & 60 Viet. c. 31, s. 3).

*In Ireland.*—In urban sanitary districts on the rate out of which the execution of the general expenses of the Public Health Act are defrayed in the district. In rural districts on the rate out of which the special expenses of the execution of the Public Health Act are defrayed in the district.

The maximum period for which money can be borrowed is now eighty years in England and Wales, and eighty years is substituted for sixty in section 234 of the Public Health Act, 1875 (3 Edward 7, c. 39, s. 1 (1)). Money borrowed, moreover, is not reckoned

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<sup>1</sup> See note at the end of Schedule L, p. 302.

as part of the debt of the Local Authority for the purposes of the limitation on borrowing under subsections 2 and 3 of section 234 of this Act (3 Edward 7. c. 39. s. i (2)).

Money, however, may be borrowed from the Public Works Loan Commissioners (section 43 (2)). The minimum interest is  $2\frac{3}{4}$  per cent (*supra*, p. 106.)

#### *Accounts.*

The Local Authority are required to present annually to the Local Government Board an account of what has been done and of all moneys received and paid by them during the previous year with a view to carrying into effect the purposes of the Act.<sup>1</sup>

A separate account must be kept (section 80). Accounts are audited in like manner and with the like incidences and consequences as the accounts of the Local Authority are for the time being required to be audited by law (section 80).<sup>2</sup>

Where land is sold whether acquired by the Local Authority for a reconstruction scheme or by the purchase of the site of an obstructive dwelling, the proceeds of the sale must be applied for any purpose, including repayment of borrowed money, for which capital money may be applied and which is approved by the Local Government Board (section 38 (11) and section 82).

<sup>1</sup> See Appendix II. In London, the accounts must be sent to the Home Secretary.

<sup>2</sup> In Ireland, *see* section 98 (11).

## CHAPTER III.

## WORKING-CLASS LODGING-HOUSES.

THE purposes of Part III. of the Act of 1890 with which the present Chapter is concerned is the provision of Working-class Lodging-houses by Local Authorities and other bodies and their management and maintenance. Such working-class lodging-houses may be separate houses or cottages, whether they contain one or several tenements. A cottage according to the definition may include a garden of not more than an acre, whose estimated value does not exceed three pounds. The estimated value means the annual value.

Since working-class lodging-houses mean separate houses or cottages whether containing one or two tenements, the term lodging-house is not appropriate and is a misnomer, and it is a pity that it should have been used by the Legislature.

The subject seems naturally to divide itself under two heads :—

I.—THE PROVISION OF LODGING-HOUSES BY THE  
LOCAL AUTHORITIES.II.—THE PROVISION OF LODGING-HOUSES BY OTHER  
BODIES.

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<sup>1</sup> *Dobbs v. Grand Junction Waterworks Company*, 9 App. Cas. 49; L.J., Q.B. 50; 49 L.T., 541.



## THE PROVISION OF LODGING-HOUSES BY LOCAL AUTHORITIES.

To entitle Local Authorities to employ the powers that are conferred upon them by the Housing Acts under Part III. they must have first adopted Part III. If they have adopted it, as has already been pointed out in Chapters I. and II., they may utilise the provisions of Part III. where they are the Local Authorities for that purpose, either in conjunction with an improvement or a reconstruction scheme, or they may use them independently for the purpose of providing working-class dwellings.

### *The Local Authorities who can adopt Part III.*

*In England.*—The Local Authorities who can adopt Part III. are, in London outside the City, the county council and the borough councils. In the City of London the Common Council. In urban districts the borough council or the urban district council, as the case may be. In the rural districts the rural district councils.

But prior to adoption rural district councils must first apply to the county councils for their consent. Whether they propose to adopt Part III. for the whole of their district, or for any contributory place or places in it. In giving or withholding their consent the county council must have regard (1) to the area for which it is proposed to be adopted ;

(2) the necessity for working-class accommodation ; (3) the probability of the accommodation being provided without adoption ; (4) the liability incurred by the rates, and the general question must also be considered whether it is prudent under all the circumstances that the district council should adopt it (63 & 64 Vict. c. 59, s. 2 (1 & 2)). Under a repealed section of the Act of 1890 the county council held an inquiry by a member of the council or one of their officers before sanctioning an adoption, and although such inquiry is now unnecessary, nevertheless as the county council cannot act without full information it is desirable that the district council should report to them on all the matters mentioned so that they may arrive at a proper conclusion.

The expression contributory place has the same meaning that has been attached to it by the Public Health Act, 1875, section 229 (section 93).

Thus the following areas are contributory places :—

“ (1.) Parishes no part of whose area is within the limits of a special drainage district formed under the Sanitary Acts or the Public Health Act, 1875, or an urban district ;

“ (2.) Every such special drainage district as aforesaid ;

“ (3.) In the case of a parish wholly situated in a rural district and part of which forms or is part of any such special drainage district as aforesaid, such portion of the parish as is not comprised within such special drainage district ; and

“(4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district or within any such special drainage district as aforesaid.”

*In Ireland.*—Part III. may be adopted by any town commissioners in a town not being an urban sanitary district for the time being, existing for the paving, lighting, or cleansing of a town under any Public Act of Parliament or any charter, and the Act when adopted shall be carried into execution by such Town Commissioners who are deemed the Local Authority. Not less than 28 days’ nor more than 42 days’ public notice must be given of the town commissioners’ intention to take into consideration the propriety of adopting it, and the time and place for holding the meeting to consider it.

If at the meeting a memorial in writing is presented to the commissioners, signed by not less than one-tenth in value of the persons liable to be rated to rates made by such commissioners, requesting them to postpone the consideration of the question for a year, then the consideration must be postponed, and entered upon as soon after the expiration of the year as the Commissioners think fit (section 99).

By the Housing Act of 1896, applying to Ireland only, it is declared :—

“Section 1.—(1). That where the town commissioners of any town in Ireland not being an urban sanitary district have adopted Part III. of the Housing of the Working Classes Act, 1890, they shall have the same powers under Part III. of

that Act of acquiring land and otherwise as any other local authority, and the said Part III. and the sections of the Public Health (Ireland) Act, 1878, applied for the purposes of that Part shall apply accordingly as if such town commissioners were a sanitary authority, and if such town commissioners are not already a body corporate they shall, for the purpose of holding such land and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

“(2.) Any instrument relating to such land shall be duly executed by such town commissioners if executed in manner provided by section 59 of the Commissioners Clauses Act, 1847, with respect to conveyances by commissioners who are not a body corporate.”

*In Scotland.*—The provisions applicable to the adoption and execution of Part III. by a rural district authority apply to the adoption and execution by a Local Authority being a district committee, and the Local Government Board for Scotland (Local Government (Scotland) Act, 1894) is substituted for the county council (96 (1)).

### *Method of Adoption.*

No special formalities for adoption are prescribed. Therefore Local Authorities can adopt the Act by resolution of which due notice has been given. The resolution for adoption must be then passed at a council meeting duly convened in the ordinary way.

Jurisdiction to adopt Part III. has been conferred upon the Metropolitan borough councils by the London Government Act of 1899. Section 5 of this Act declares that certain enactments (of which

the Working Classes Act, 1890, Part III. was one) may be put in force by a borough council in a borough. But the Act of 1900 extended these powers by enabling borough councils to establish or acquire working-class lodging-houses to supply the needs of their district, inside or outside the borough. Apparently, though there is no express repeal of the limitation imposed in the Act of 1899, it must be considered impliedly repealed by the later Act. Adoption, however, is unnecessary in districts where the Labouring Classes Lodging Houses Acts, 1851 to 1885, have been already adopted, as an adoption under these Acts is deemed an adoption of Part III., and the provisions of the Housing of the Working Classes Acts apply to such adoption. Dwelling-houses furthermore acquired by Local Authorities under the Artizans Dwellings Acts, 1868 to 1885, and vested in them, are held as if they had been acquired under Part III. (2), and land or premises other than dwelling-houses so acquired and held by them are now held as if they had been acquired as the site of an obstructive building, but may, with the consent of the authority authorised by Part II. (4) to consent to the sale of land so acquired, be appropriated for the purposes of Part III.

A county council if a parish council should have resolved that a rural district council ought to have taken steps for the adoption of Part III. or to

have exercised their powers under that Part and have failed so to do, may if satisfied, after due inquiry, that the district council have so failed, resolve that the powers of the district council for the purposes of Part III. shall be transferred to the county council with respect to the parish and they shall be transferred accordingly. The resolution of the county council acts if necessary as an adoption of Part III. by the district council, and section 63 of the Local Government Act of 1894 applies as if the powers had been transferred under that Act.

Section 63 is as follows :—

“63.—(1.) When the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect :—

“(a.) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board.

“(b.) The expense incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses.

“(c.) The county council for the purpose of the powers transferred may, on behalf of the district council, borrow, and subject to the like conditions, in the like manner, and on the security of the like fund or rate as the district council might have borrowed for the purposes of these powers.

“(d.) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan, with the interest thereon, shall be paid by the district council in like manner and the charge shall have the like effect as if the loan were lawfully raised and charged on that fund or rate by the district council.

“(e.) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers.

“(f.) The county council may, by order, vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities, &c. vested shall be deemed to have been acquired or incurred by the district council for the purpose of these powers.

“(2) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any questions arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed the members who are actually appointed shall act as the joint committee.”

### *Execution.*

As soon as Part III. has been adopted, when adoption is necessary, the Local Authority may enforce its provisions. For this purpose in London the county council may exercise the same powers

whether of contract or otherwise that the Metropolitan Board of Works exercised in executing their duties under the Metropolis Management Act of 1855 and the Amendment Act (section 56). The most important of these was the power possessed of entering into contracts, but contracts for works or materials where the value or amount exceeded 10*l.* were required to be in writing or in print, or partly in writing and partly in print, and sealed with the seal of the Metropolitan Board or vestry (Metropolis Management Act, 1855, section 149). Powers are also possessed of acquiring land for the purposes of the Act, but these powers are apparently not applicable, as land is now acquired under the Housing Acts.

Penalties under the Metropolis Management Acts, whether mentioned in the contract or in any bond or otherwise, might be compounded for. In the City of London the Common Council possess similar powers to those which the old Commissioners of Sewers possessed under 11 & 12 Vict. c. clxii.

The powers of the Metropolitan borough councils are those formerly exercised by the vestries and local boards of London<sup>1</sup> and are in many respects similar to these.

Outside London the powers of urban district councils, borough councils, and rural district

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<sup>1</sup>London Government Act, 1899, section 4.



councils are found in the Public Health Act of 1875 (sections 173 and 174). Of these section 173 authorises any Local Authority to enter into any contracts necessary for carrying this Act into execution. The contracts of urban authorities must be made in accordance with the provisions of section 174, which requires that certain regulations should be observed :—

“Subsection (1) requires that every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of the authority.

“Subsection (2) requires that every such contract shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the times or time within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed.

“Subsection (3) requires that before contracting for the execution of any works under the provisions of the Act an urban authority must obtain from their surveyor an estimate in writing as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same, also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work or for executing and also maintaining the same in repair during a term of years or otherwise.

“Subsection (4) requires that before any contract of the value or amount of one hundred pounds and upwards is entered into by an urban authority ten days' public notice at least shall be given expressing the nature and purpose thereof and inviting tenders for the execution of the same, and such authority shall require and take sufficient security for the due performance of the same.

"Subsection (5) enacts that contracts in conformity with the provisions of this section and duly executed by the other parties thereto shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto, and their executors, administrators, successors or assigns, to all intents and purposes. Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract or in any bond or otherwise for such sums of money or other recompense as to such authority may seem proper."

Rural authorities' contracts are governed by the ordinary law of the land relating to corporate bodies. A great number of cases explanatory of these sections relating to urban authorities have been decided. The reader is referred to Lumley's Public Health Act, sixth edition, pp. 259 to 265.

With reference to the constitution of committees and voting on resolutions by councillors or members of local bodies the reader is referred to Chapter I.<sup>1</sup>

### *Acquisition of Land.*

Local Authorities may acquire land within or without their districts (section 57 and the Act of 1900, section 1), except rural district councils.<sup>2</sup> When land is purchased it is purchased under the purchase clauses of the Public Health Act of 1875 (sections 175 to 178), which are applied to London as if the Common Council and the London County

<sup>1</sup> *Supra*, pp. 8, 12.

<sup>2</sup> With regard to London borough councils, *supra*, p. 184.

Council were the Local Authority mentioned in these sections and a Secretary of State were substituted for the Local Government Board.<sup>1</sup>

These sections are :-

“ Section 175. Any local authority<sup>2</sup> may, for the purposes and subject to the provisions of this Act, purchase or take on lease, sell or exchange any lands whether situated within or without their district. . . . Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge by means of a sinking fund or otherwise of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

“ Section 176. With respect to the purchase of lands by a local authority for the purposes of this Act the following regulations shall be observed : (that is to say) :

“ (1.) The Lands Clauses Consolidation Acts, 1845, 1869 and 1869 shall be incorporated with this Act, except the provisions relating to access to the Special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845.

“ (2.) The local authority before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the taking of lands otherwise than by agreement shall

“ Publish once at the least in each of three successive weeks in the month of November, in

<sup>1</sup> In Scotland the corresponding sections of the Public Health Act (Scotland), 1897, and in Ireland references to the Public Health (Ireland) Act, 1878. These are 209, 210, 212, 213, & 215 of the Public Health (Ireland) Act, 1878.

<sup>2</sup> That is any urban or rural district council.

some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable times, and stating the quantity of lands that they require, and shall further

“Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee and occupier of such lands defining in each case the particular lands intended to be taken and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands.

“(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may if they think fit present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken and the purposes for which they are required and the names of the owners, lessses and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands or who have returned no answer to the notice : it shall pray that the local authority may with reference to such lands be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires.

“(4) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served, the Local Government Board shall take such petition into consideration, and may either dismiss the same or direct a local inquiry as to the propriety of assenting to the

prayer of such petition : but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof.

- " (5) After the completion of such inquiry, the Local Government Board may, by provisional order, empower the Local Authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the Local Authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served : Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October, or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held before the expiration of one month from the last day of the second of the two months in which the notices are given ; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more such persons on behalf of all such persons.

" Section 177. Any Local Authority may, with the consent of the Local Government Board, let for any term any lands which they may possess as and when they can conveniently spare the same.

" Section 178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject

and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any Local Authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to her Majesty, her heirs or successors in right of the said duchy, or any right, interest or easement in, through, over, or in any such lands which for the purposes of this Act such Local Authority from time to time deem it expedient to purchase; and on payment of the purchase money as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale. Such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act."

In acquiring lands, the Amendments of the Settled Land Act, already referred to, apply, and the reader is referred to Chapter I.<sup>1</sup>

Compensation in disputed cases is determined by a single arbitrator, appointed and removable by the Local Government Board (63 & 64 Vict. c. 59. s. 7).

In the case of a Council in London a Secretary of State takes the place, and exercises the powers, of the Local Government Board.

Sections 32, 33, 35, 36, and 37 of the Lands Clauses Consolidation Act of 1845 apply, with any necessary modification, to an arbitration, and to an arbitrator appointed.

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<sup>1</sup> *Supra*, p. 52, as to the Settled Land Act; p. 50, as to the powers of corporate bodies; as to the Mortmain Act, p. 52.

These sections have already been referred to in Chapter II.<sup>1</sup>

In the event of the death, removal, resignation, or incapacity, refusal or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint his successor. The arbitrator has power to certify costs.<sup>2</sup> His award is final, and when he has made his award the amount certified to be paid is recoverable as a debt from the Local Authority, with interest at 5 per cent. per annum for any time during which it remains unpaid.<sup>3</sup>

#### *Purchase or Lease of existing Lodging Houses.*

Power is given to a Local Authority to contract for the purchase or lease of any working class lodging-house, whether it is already built and provided, or afterwards to be built and provided (section 57 (2)).

#### *Power of Appropriation, Leasing, Selling, and Exchanging Land.*

A Local Authority, subject to the Local Government Board's consent, except in the case of a rural district council, when the county council's consent is required, may appropriate,<sup>4</sup> for the purposes of

<sup>1</sup> *Supra*, p. 167.

<sup>2</sup> *Supra*, p. 175.

<sup>3</sup> 63 & 64 Vict. c. 59. s. 7, and sect. 41 of the principal Act, ss. (5), (7), (8), (10), and (11).

<sup>4</sup> The consent of the Treasury is required in Ireland.

Part III., any lodging-houses purchased or taken on lease, and any other land which may for the time being be vested in them or at their disposal (section 57-3).

Trustees of lodging-houses for the working classes for the time being provided in any district by private subscriptions or otherwise may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease them to the Local Authority, or make over to them the management (section 58).

On land acquired<sup>1</sup> or appropriated<sup>2</sup> by them, Local Authorities may *a* build working class lodging-houses, or convert existing buildings into lodging-houses; they can also, if they choose, *b* alter, enlarge, repair, and improve them, and *c* fit them up, furnish them, and supply them with all requisite furniture, fittings, and conveniences (section 59); *d* they can also let the land they have acquired or appropriated to any lessee for the purpose of building and maintaining working class lodging-houses, but necessary provisions must be inserted in the leases for insuring that the land and buildings should be used for lodging-houses—particularly, provisions binding the lessee to build according to the terms of the lease, to maintain and repair the buildings, to secure their use exclusively as lodging-

<sup>1</sup> *Supra*, p. 190.

<sup>2</sup> *Supra*, p. 195.



houses, and to prohibit additions or alteration of their character without the Local Authorities' consent. A proviso for re-entry must also be inserted entitling the Local Authority to enter on breach of any of these conditions, and every deed or instrument of demise must be endorsed with notice of section 5 of the Act of 1900 (Act of 1900, section 5).

Before Local Authorities can lease land they must, however, in London obtain the Home Secretary's consent; in the country, that of the Local Government Board. Rural district councils require the consent of the county council.

Lodging-houses built under leases from the Local Authority are, however, not subject to the Local Authorities' regulations and bye-laws, sections 61 and 62 not applying,<sup>1</sup> but they are of course subject to bye-laws affecting lodging-houses as a class.

By the 3rd Edward 7. c. 39. s. 11, applying only to England and Wales, additional power is given to Local Authorities to provide and maintain, with the consent of the Local Government Board, and if desired jointly with any other person in connection with dwelling or lodging-house accommodation, buildings adapted for use as shops, a recreation ground, or other buildings or land, which in the opinion of the Local Government Board would serve a beneficial purpose in connection with the

<sup>1</sup> *Infra*, p. 199.

requirements of the persons for whom the dwelling accommodation or lodging-houses are provided. Money may be borrowed if necessary for this purpose.

Local Authorities have also conferred upon them a power of selling land vested in them for the purposes of Part III. and of applying the proceeds in or towards the purchase of other land better adapted for those purposes. They also have a power of exchanging lands vested in them for land better adapted to the purposes of Part III., either with or without paying or receiving any money for equality of exchange (section 60).

The consent of the Local Government Board is required in all cases, including London, before these powers can be exercised, except in the case of the rural sanitary authority, when the consent of the county council is substituted for that of the Local Government Board (section 60).<sup>1</sup>

*In Ireland.*—Where Commissioners of any town, not being an urban sanitary district, have adopted Part III., they possess the same powers under Part III. of that Act of acquiring land and otherwise as any other Local Authority, and Part III. and the sections of the Public Health (Ireland) Act, 1878, applied for the purposes of that Part, shall apply accordingly as if such Town Commissioners were a

<sup>1</sup> The consent of the Treasury is required in Ireland.

sanitary authority, and if such Town Commissioners are not a body corporate they shall, for the purposes of holding such land and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession. (59 & 60 Vict. c. 11.)

Any instrument relating to such land shall be duly executed if executed by such Commissioners according to section 59 of the Commissioners' Clauses Act of 1847 with respect to conveyances by commissioners who are not a body corporate.

### *Management of Lodging Houses.*

The general management, regulation and control of Local Authorities' lodging-houses are vested in and exercised by Local Authorities. They may make reasonable charges for their tenancy and occupation, determining what these shall be by regulations (section 61 (1 and 2)), and they may also make byelaws for their management, use, and regulation. It is obligatory, however, unless the lodging-house is occupied as a separate dwelling, that by the byelaws sufficient provision must be made for the following purposes (section 62 (1)) :—

- (1) For securing that the lodging-house is under the management and control of the officers or others appointed or employed in that behalf by the Local Authority ;

- (2) For securing the due separation at night of men and boys above eight years old from women and girls ;
- (3) For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisance ;
- (4) For determining the duties of the officers, servants, and others appointed by the Local Authority. Schedule 6 of the Act of 1890.

As to what are separate dwellings, *see* Carlisle Café Co. *v.* Muse.<sup>1</sup>

A printed copy or sufficient abstract of the byelaws is required to be put up and at all times kept in every room of the lodging-house. These byelaws relate to the management, use, and regulations of the lodging-house, and are made in London under sections 202 and 203 of the Metropolis Management Act of 1855. Outside London the power of the Local Authority to make byelaws arises under sections 182 to 188 of the Public Health Act. A fine or penalty under any byelaw is recoverable on summary conviction (section 84 (*a* and *b*)).

Any fine for the breach of a byelaw must be paid to the credit of the funds<sup>2</sup> out of which the expenses of Part III. of the Act are defrayed (section 71).

<sup>1</sup> 67 L.J.Ch., Ch. 52 ; 77 L.T., 515.

<sup>2</sup> *Infra*, p. 203.

In Ireland byelaws made for the regulation of lodging-houses, in pursuance of Part III., are not valid until approved by the Local Government Board of Ireland.

A production of a copy of the byelaws purporting to be sealed with the seal of the Local Government Board and signed by the President or by the Under Secretary to the Lord Lieutenant or by the Vice-President or by two other members of the Board both signing, is sufficient evidence of such approval in all courts of justice and elsewhere.

Fines for breach of byelaws are recoverable summarily, one-half of the fine going to the informer, the other half to the authority who made the byelaw. The authority must apply it in aid of the expenses of the lodging-houses, section 101 (2 and 3).

With reference to byelaws made by town commissioners, these are made under section 84.<sup>1</sup>

In Scotland the provisions of the Public Health (Scotland) Act, relating to the rules and regulations for common lodging-houses apply to such byelaws with the necessary variations. Fines or penalties under a byelaw are recovered summarily.

With reference to the tenants of lodging-houses, the receipt of poor law relief, except where the relief has been received on account only of accident or temporary illness, acts as a disqualification for tenancy or occupation. The object of the Legislature

<sup>1</sup> *Infra*, p. 206.

is to provide lodging-houses for genuine working-class people who are unable to find dwelling accommodation except with the Local Authorities' assistance.

The disqualification extends to apply the words of the Act "to any person, who or whose wife or husband while such person is a tenant or occupier of any such lodging-house or any part of such a lodging-house receives any relief under the Acts relating to the relief of the poor" (section 63).

A lodging-house once established must be kept for seven years or upwards by the Local Authority before it can be sold. But when seven years have elapsed if the Local Authority determines that it is unnecessary or too expensive to keep up they may sell it for the best price they can reasonably obtain for it; but before a sale can take place the Local Government Board's assent is required except in a rural district, when the assent of the county council is necessary (section 64).

A lodging-house established in any district must be at all times open to the inspection of the Local Authority of the district or of any officer of the authority (section 70).

The officer is protected in his duty of inspection, and a person obstructing him in his duty is liable to a fine of 20*l.* (section 89) recoverable under the Summary Jurisdiction Acts.

The Local Authority where they are owners of the water supply or of the gas may supply their own lodging-houses with water or gas either free of charge or on such other favourable terms as they may think fit, or they might supply any lodging-houses provided under Part III. of the Act. The power, however, is not merely confined to the Local Authority, for any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may in their discretion supply water or gas to lodging-houses either free of charge or on favourable terms (section 69).

### *Expenses of Administration.*

The expenses incurred in defraying Part III. are defrayed in the Administrative County of London, which includes the City, by the London County Council and the Common Council out of the Dwelling House Improvement Fund under Part I.<sup>1</sup> (section 65 (i)).

But where the Metropolitan borough councils administer this Act, whether within or without the borough they are defrayed as part of the council's

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<sup>1</sup> *Supra*, p. 98.

ordinary expenses.<sup>1</sup> The expressions "district," "local authority," and "local rate" include for this purpose a metropolitan borough, the council of the borough, and the general rate of the borough.<sup>2</sup>

Outside London when the Act is administered by a town council or urban district council these expenses are treated as part of the general expenses of the execution of the Public Health Acts (section 65 (2)). These are payable out of the local rate, which is either the borough or the general district rate. It may, however, be a local rate<sup>3</sup> where no borough or general district rate is levied.

In the case of rural district councils the expenses of the Local Authority are defrayed as special expenses under the Public Health Acts, but on the application of the rural district council the county council may declare that they shall be defrayed as general expenses of the authority in the execution of the Public Health Acts if the whole district is not to bear them. They are to be paid out of a common fund to be raised in the manner provided by the Public Health Act, 1875, but as if the contributory places which are to bear these expenses constituted the whole of the district.

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<sup>1</sup> 63 & 64 Vict. c. 59, s. 3 (1).

<sup>2</sup> *Ibid.*

*See* note at the end of Schedule 1., p. 308.



The expression contributory place, unless the context otherwise requires, has the same meaning as in the Public Health Act, 1875.<sup>1</sup>

*In Scotland.*—The expenses are defrayed out of the Public Health General Assessment (The Public Health (Scotland) Act, 1897, and Schedule I. of the Housing Act), but in the case of a rural sanitary authority the assessment shall be levied only within the parish or parishes in respect of which such expenses are incurred.

*In Ireland.*—The expenses in urban sanitary districts are defrayed out of the rate out of which the general expense of the execution of the Public Health (Ireland) Act, 1878, are defrayed in these districts (Schedule I.).

Where, in a town not being an urban sanitary district, Part III. has been adopted,<sup>2</sup> the Commissioners become Local Authorities, and the local rate is any rate which the Commissioners have power to impose for the purpose of paving, lighting, cleansing,

<sup>1</sup> *Supra*, p. 182. Under the Public Health Act a rural district authority's expenses are either general or special. General expenses are payable out of a common fund, raised out of the poor rate. Special expenses are a separate charge on each contributory place, and are raised in the same way as if they were a poor rate, with the exception that the owner of tithes or a title commutation rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water or used as a canal or towing-path for the same, or as a railway constructed under the powers of an Act of Parliament for public conveyance shall, where a special assessment is made for the purpose of such rates, be assessed in respect of one-fourth part only of the rateable value, or where no special assessment is made shall pay one-fourth part of the rate payable in respect of houses and other property.

It must be noticed that there are also special provisions dealing with contributory places.

<sup>2</sup> *Supra*, p. 181.

or otherwise improving the town; and such rate may, with the approval of the Treasury, be increased for that purpose (section 99 (4)).

The Housing of the Working Classes Act (Ireland) 1893, by section 2 provides that all expenses incurred by Town Commissioners in the execution of Part III. shall be defrayed out of the local rate, and the town of any Town Commissioners shall be a district within the meaning of Parts III. and VI. of the principal Act, and section 83 of the Housing Act shall apply as if the Town Commissioners were a sanitary authority; that is, the Town Commissioners are entitled to make bye-laws in respect of any lodging-houses they have established under the Act.

The net income arising from lodging-houses or dwellings provided by the Commissioners, after the payment of all outgoings, including the interest and instalments of principal of any loan, shall be paid to the Town Commissioners' Fund, or otherwise, in aid of the rates which have been applied to the payment of the expenses.

### *Borrowing Powers.*

The borrowing powers of the London County Council and the Common Council are those already referred to in connection with borrowing for the purposes of an improvement scheme.<sup>1</sup>

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<sup>1</sup> *Supra*, p. 103.

District councils borrow as for the purpose of defraying the general expenses of the execution of the Public Health Act (1875).<sup>1</sup>

Metropolitan borough councils may borrow in like manner as for Part II. (63 & 64 Vict. c. 59. s. 3 (2)).<sup>2</sup>

The London County Council may lend sums borrowed in pursuance of Part. III. (section 16 (3)), (63 & 64 Vict. c. 59. (2)). If the County Council refuse their assent to a loan, an appeal lies from them to the Local Government Board (London Government Act, 1899, sections 1-4).

As to the provisions relative to the maximum period for which money may now be borrowed in England and Wales, *see* Chapters I. and II., pp. 103-4, 106, 178.

The limitation on borrowing under the Public Health Act, 1875, is no longer in force with reference to borrowing for housing purposes.<sup>3</sup>

The maximum period for which money may be borrowed is 80 years<sup>4</sup> in England and Wales.

*In Scotland* money may be borrowed in the same manner and subject to the same conditions as nearly as may be as money may be borrowed for the erection of hospitals under the Public Health (Scotland) Amendment Act, 1871, and any Acts amending the same (section 96 (2), and 59 & 60 Vict. c. 31.).

<sup>1</sup> Under sections 233 to 243.

<sup>2</sup> *Supra*, p. 177.

<sup>3</sup> 3 Edward 7, c. 39, s. 1 (2).

<sup>4</sup> *Ibid.*

The Public Works Loans Commissioners may lend any Local Authority money for the purposes of Part III.<sup>1</sup>

## II.—THE PROVISION OF LODGING-HOUSES BY OTHER BODIES.

Lodging houses may be established by bodies other than local bodies to facilitate the establishment of these ; provision is made for assisting these bodies by loans provided by the Public Works Loan Commissioners, who are empowered to advance out of their funds loans to the following bodies or proprietors :—

- (i.) Railway companies.
- (ii.) Dock or harbour companies.
- (iii.) Any other company, society, or association established for the purpose of constructing or improving or of facilitating or encouraging the construction or improvement of dwellings for the working classes.
- (iv.) Trading or manufacturing companies, societies or associations in the course of whose business or (in the discharge of whose duties persons of the working classes are employed).
- (v.) Private persons entitled to any land in fee-simple or for a term of years absolute

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<sup>1</sup> *Supra* as to rate of interest, p. 106.

whereof not less than fifty years shall for the time being remain unexpired (section 67).

Any such body or proprietor may borrow from the commissioners such money as may be required for the purpose of facilitating or encouraging the construction or improvement of working-class dwellings.

Loans are made under the Public Works Loans Act of 1875, and the regulations made thereunder. They are subject, however, to the following provisions :—

- (a) Loans may be made whether the body or proprietor receiving it has power or not to borrow on mortgage or otherwise independently of the Housing Act.
- (b) Repayment must be made within a period not exceeding forty years.
- (c) Money shall not be advanced on mortgage of land or dwelling solely, unless the estate proposed to be mortgaged is freehold or a term of years absolute of which fifty years is unexpired at the date of the advance.
- (d) The amounts must not exceed a moiety of the value to be ascertained to the satisfaction of the commissioners. Advances, however, may be made by instalments as the building progresses, provided that the

total advance does not at any time exceed a moiety, and a mortgage may be made to secure such advances so to be made from time to time.

Any of the before-mentioned bodies are authorised to purchase, take, and hold land, and if not a corporate body for the purposes of holding land, and of suing and of being sued, is deemed a corporate body with perpetual succession (section 67).

Railway, dock, or harbour companies, or any other company, society, or association established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the working classes are employed, may and are authorised (notwithstanding any Act of Parliament or charter or any rule of law or equity to the contrary) at any time to erect either on their own land or any other land (which they are hereby authorised to purchase and hold for the purpose and to pay for out of any funds at their disposal) dwellings for the accommodation of all or any of their working-class employees (section 68).

The management of lodging houses established by these bodies is not under the regulation and control of the Local Authorities, but of course they would be subject to any general byelaws and would require to be built according to the Building Acts or byelaws made in respect of building by Local

Authorities.<sup>1</sup> In the London Building Act there are special provisions relative to houses of the working classes.<sup>2</sup>

A lodging-house established in any district must at all times be open to the inspection of the Local Authority of the district or of any officer from time to time authorised by such authority.<sup>3</sup>

*In Ireland.*—Sections 56 to 61 inclusive and sections 99 to 103 inclusive of the Commissioners Clauses Act of 1817 are incorporated with Part III. so far as regards any town commissioners or any dock or harbour company or commissioners. In the construction of these sections for the purposes of Part III., with which they are incorporated, the expression commissioners means any such commissioners or company as aforesaid, and the special Act means the Housing Act of 1890 (section 100).

### *Byelaws.*

Companies, societies or associations establishing lodging-houses under the provisions of Part III. have the same power of making byelaws for their regulation as a Local Authority possesses (section 101 (1)).<sup>4</sup>

<sup>1</sup> *Manchester, Sheffield and Lincolnshire Railway Company v. Barnsley Union*, 56 J.P. 149.

<sup>2</sup> *London County Council v. Davis* (1898), 62 J.P. 68.

<sup>3</sup> As to the penalty for obstruction, *supra* p. 202.

<sup>4</sup> As to the admission of a copy of byelaws as evidence and application of fines recovered for breaches of byelaws, *see* pp. 200, 201.

## CHAPTER IV.

AMONGST other features which have contributed to the necessity for legislation for the proper housing of the working class has been the action of Local Authorities, railway companies, school boards, and other public bodies. Working men have been evicted from their dwellings for the purposes of street widenings, the building of municipal offices, the construction of railways, the erection of school buildings, and for various other purposes; and, in consequence, they have been literally unable to find room to live near their work, or, if they have found room to live, it has been only by overcrowding existing tenements, with the result that serious evil to the community has followed.

Parliament has for years insisted on promoters introducing Bills complying with the Standing Orders of both Houses, and these Orders have been directed to compel promoters to provide accommodation for the working-men they have dishoused, but there has been no general statute dealing with the subject.

But now, in England and Wales, the schedule to the recent Act (3 Edward 7. c. 39) puts matters on a more satisfactory footing, and Local Authorities and



others will be able to readily see the extent of their obligations.

The schedule provides that—

(1.) If in the administrative county of London, or in any borough or urban district, undertakers have power to take under the enabling Act working-men's dwellings occupied by thirty or more persons belonging to the working class, the undertakers shall not enter on any such dwellings in that county, borough, urban district, or parish until the Local Government Board have either approved of a housing scheme under this schedule or have decided that such a scheme is not necessary. For the purposes of the schedule a house is considered a working-man's dwelling if it is wholly or partially occupied by a person belonging to the working classes, and for the purpose of determining whether a house is a working-man's dwelling or not, and also for determining the number of persons belonging to the working classes by whom any dwelling-houses are occupied, any occupation on or after the fifteenth day of December next before the passing of the enabling Act, or, in the case of land acquired compulsorily under a general Act without the authority of an order, next before the date of the application to the Local Government Board under this schedule for their approval of, or decision with respect to, a housing scheme, shall be taken into consideration.

“Undertakers” means any authority, company, or person who are acquiring land compulsorily or by agreement under any local Act or Provisional Order, or order having the effect of an Act, or are acquiring land compulsorily under any general Act (section 12 (a)).

Enabling Act means any Act of Parliament or Order under which the land is acquired (section 12 (b)).

Dwelling or house means any house or part of a house occupied as a separate dwelling (section 12 (*d*)).

The expression working class includes “mechanics, artizans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them” (section 12 (*e*)).

The Standing Orders of the Houses of Parliament, 1893, applying to the promotion of Bills by undertakers are as follows :—

House of Commons Standing Orders 38 and 39 identical with Standing Orders 38 and 39 of the House of Lords.

38. Where any Bill contains or revives or extends power to take compulsorily or by agreement any land in any local area as defined for the purposes of this Order, and such taking involves or may involve the taking in any local area in London of twenty or more houses, or in any other local area of ten or more houses, occupied either wholly or partially by persons of the labouring class, whether as tenants or lodgers, the promoters shall deposit in the Private Bill Office, and at the Office of the Central Authority, on or before the 31st *December*, a statement of the number, description, and situation of all such houses and the number (so far as can be

ascertained) of persons residing therein, and also a copy of so much of the plan (if any) as relates thereto.

This Order shall not apply where a statement in pursuance of this Order was deposited in respect of the Act, the powers of which are proposed to be revived or extended.

For the purposes of this Order—

The expression “local area” means—

- (1) as respects London the City of London, and any Metropolitan Borough ;
- (2) as respects England and Wales (outside London), any borough, or other urban district, and elsewhere than in a borough or other urban district, any parish ;
- (3) as respects Scotland, any district within the meaning of “The Public Health (Scotland) Act, 1897” ; and
- (4) as respects Ireland, any urban district.

The expression “house” means any house or part of a house occupied as a separate dwelling :

The expression “labouring class” means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them :

The expression “Central Authority” means, as regards London, the Secretary of State for the Home Department, and as regards *England* and *Wales* (outside London), the Local Government Board, as regards *Scotland*, the Secretary for *Scotland*, and as regards *Ireland*, the Local Government Board for *Ireland* :

The expression “Bill” includes a Bill confirming a Provisional Order.

39. Whenever plans, sections, books of reference, or maps are deposited in the case of a Provisional Order or Provisional Certificate, proposed to be made by any Public Department or County Council, duplicates of the said documents shall also be deposited in the Private Bill Office: provided that with regard to such deposits as are so made at any Public Department or with any County Council, after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November.

*Houses of the Labouring Class.*

184. In the case of every Bill which gives, receives, or extends power to take land compulsorily or by agreement, clauses shall be inserted:—

- (1) Providing that the promoters shall not in the exercise of such power purchase or acquire in any local area in London twenty or more houses, or in any local area ten or more houses, occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers unless and until—

(a) they shall have obtained the approval of the Central Authority to a scheme for providing new dwellings for the persons residing in such houses, or for such number or proportion of such persons having regard to the number of persons residing in such houses, or for such number as the Central Authority shall after inquiry deem necessary, having regard to the number of persons residing in the houses liable to be taken and working within one mile therefrom and to the amount of vacant suitable accommodation in the immediate neighbourhood of the houses liable to be taken, or to the place of employment of such persons and all the other circumstances of the case; and

(b) they shall have given security to the satisfaction of the Central Authority for the carrying out of the scheme;

- (2) Imposing adequate penalties on the promoters in the event of houses being acquired or appropriated for the purposes of the Bill in contravention of the foregoing provisions ;
- (3) Providing that the expenses or any part of the expenses incurred by the Central Authority under this Order shall be defrayed by the promoters of the Bill, or out of moneys to be raised under the Bill ; and
- (4) Conferring on the promoters and on the Central Authority respectively any powers that may be necessary to enable full effect to be given to the said scheme.

The Committee may provide that any house purchased or acquired by the promoters in any local area in London for or in connection with any of the purposes of the Bill, whether purchased or acquired in the exercise of the powers of the Bill or otherwise, and whether before or after the passing of the Bill shall be deemed, for the purposes of the clauses so to be inserted, to have been purchased or acquired in exercise of the powers of the Bill.

Expressions defined in Order 38 have the same meanings in this Order.

Section 111 of the Standing Orders of the House of Lords is identical in terms.

### *Housing Scheme.*

If the Local Government Board decides that a housing scheme is necessary the undertakers must make it.

A housing scheme must provide for the accommodation of such number of persons of the working class as is, in the opinion of the Local Government Board, required, taking into account all the circumstances, but that number shall not exceed the

aggregate number of persons of the working class displaced. The Local Government Board in making their calculations must consider, not only the persons of the working class who are occupying the workmen's dwellings which the undertakers have power to take, but also any persons of the working class who, in the opinion of the Local Government Board, have been displaced within the previous five years in view of the acquisition of land by the undertakers (section 2).

The housing scheme may provide for giving undertakers, who are a Local Authority or who have not sufficient powers<sup>1</sup> for the purpose, power for the purpose of the scheme to appropriate land or to acquire land either by agreement or compulsorily under the authority of a Provisional Order (section 3).

The Local Authority to whom this power may be given may be a county council, a district council of any county district, a metropolitan borough council in which in any case any houses in respect of which the rehousing scheme is made are situated, or the Common Council of the City of London (section 12 (c)).

Power may also be given to any Local Authority to erect dwellings on land so appropriated or acquired by them; also power to sell or dispose of any dwellings, and to raise money for the purposes of the scheme as for purposes of Part III. of the

<sup>1</sup> See as to powers, *supra*, *passim* under Parts 1, 2, & 3.

Housing Act of 1890 (*supra*, Chapter III., p. 195), and for regulating the application of any money arising from the sale or disposal of the dwellings. Any provisions so made take effect as if they had been enacted in an Act of Parliament (section 3).

The housing scheme must provide that lands acquired under the scheme shall, for a period of twenty-five years from the date of the scheme, be appropriated for the purpose of working-class dwellings, except so far as the Local Government Board dispense with that appropriation. Every conveyance, demise, or lease of any such land must be endorsed with notice of this provision, and the Local Government Board may require the insertion in the scheme of any provisions requiring a certain standard of dwelling-house to be erected under the scheme or any conditions to be complied with as to the mode in which the dwelling-houses are to be erected (section 4). No doubt these conditions will be similar to those which are at present insisted upon before an improvement scheme is sanctioned.<sup>1</sup>

A housing scheme, like an improvement or reconstruction scheme, may be modified by the Local Government Board after it has been approved by them, on the application of the undertakers.

The Local Government Board, if they choose, may hold a local inquiry before approving a housing

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<sup>1</sup> *Supra*, p. 18.

scheme. If they do not, they must, before approving the scheme, send a copy of the draft scheme to every Local Authority, and must consider any representation made within the time fixed by the Board by any such authority (section 5).

Local inquiries may be held by the Local Government Board if they think fit for the purposes of their duties under this schedule (section 87 (1) and (5) of the Local Government Act of 1888 applies whether the undertakers are Local Authorities or not).

These subsections are as follows :—

(1) Where the Local Government Board are authorised by this Act to make any inquiry to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry. Sections 293 to 296 both inclusive of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.<sup>1</sup>

(5) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officers of the Board engaged on the inquiry not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

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<sup>1</sup> *Supra*, p. 41.



There are two important provisions that the Local Government Board can insist upon as a condition of their approval to a housing scheme -

- (1) That the new dwellings under the housing scheme or some part of them shall be completed and fit for occupation before possession is taken of any working-men's dwellings under the enabling Act (section 6).
- (2) That the undertakers shall give such security as the Board thinks proper for carrying the scheme into effect (section 7).

If working-men's dwellings are entered upon in contravention to the provisions of the schedule, or of any conditions of approval of the housing scheme made by the Local Government Board, the undertakers are liable to a penalty not exceeding five hundred pounds in respect of every such dwelling (section 9).

Penalties are recoverable by action in the High Court by the Local Government Board; they must be carried, if recovered, to the consolidated fund (section 9).

Where the undertakers fail to carry out any provision of the housing scheme, the Local Government Board may make any such order as they think necessary or proper for the purpose of compelling them to carry out that provision, and any such order may be enforced by *Mandamus* (section 10).

The jurisdiction of the Local Government Board does not extend to London at present, but is exercised by the Secretary of State (3 Edward 7, c. 39. s. 17).

Provision, however, is made for the transference of duties performed by the Home Office by Order in Council to the Local Government Board (3 Edward 7. c. 39. s. 2 (1) (2)).



## APPENDICES.



## APPENDIX I.

## THE HOUSING STATUTES.

## MUNICIPAL CORPORATIONS ACT, 1882.

[15 &amp; 46 Vict. Ch. 50.]

An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales. [18th August 1882.]

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III.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the Treasury<sup>1</sup> for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury<sup>1</sup> approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site), provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building without the

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<sup>1</sup> New Local Government Board (Local Government Act, 1888, s. 72).

consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorised by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.<sup>1</sup>

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes approved by the council shall not prevent the building from being deemed a dwelling.

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## HOUSING OF THE WORKING CLASSES ACT, 1885.

[48 & 49 VICT. CH. 72.]

An Act to amend the Law relating to Dwellings of the Working Classes. [14th August 1885.]

### *Amendment of General Sanitary Law, &c.*

7. It shall be the duty of every local authority entrusted with the execution of laws relating to public health and local government to put in force from time to time as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary

<sup>1</sup> With the consent of the Local Government Board, s. 106.

condition of all premises within the area under the control of such authority.

8. Whereas under section ninety of the Public Health Act, 1875, the Local Government Board can declare that section to be in force within the district of a sanitary authority, and after the publication of notice of such declaration such authority is empowered to make byelaws with respect to lodging-houses, and it is expedient to authorise every such authority to make such byelaws without any declaration by the Local Government Board : Be it therefore enacted as follows :—

Every sanitary authority shall have power to make byelaws for the matters specified in section ninety of the Public Health Act, 1875.

9.—(1.) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates whether or not members of the same family, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875 : and the provisions of that Act shall apply accordingly.

(2.) A sanitary authority may make byelaws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connexion with the same.

(3.) Where any person duly authorised by a sanitary authority or by a justice of the peace has reasonable cause to suppose either that there is any contravention of the provisions of this Act or any byelaw made under this Act in any tent, van, shed, or similar structure used for human habitation, or that there is in any such tent,

van, shed, or structure any person suffering from a dangerous infectious disorder, he may, on producing (if demanded) either a copy of his authorisation purporting to be certified by the clerk or a member of the sanitary authority or some other sufficient evidence of his being authorised as aforesaid, enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether in such tent, van, shed, or structure there is any contravention of any such byelaw or a person suffering from a dangerous infectious disorder.

(4.) For the purposes of this section "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

(5.) If such person is obstructed in the performance of his duty under this section, the person so obstructing shall be liable, on summary conviction, to a fine not exceeding forty shillings.

(6.) This section shall apply to the Metropolis, with the substitution of section sixteen of the Sanitary Act, 1866, for section ninety-one of the Public Health Act, 1875, and of nuisance authority, under the Nuisance Removal Acts, for sanitary authority.

(7.) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of Her Majesty's military or naval forces.

**10.<sup>1</sup>—**(1.) With respect to byelaws authorised by this Act or by the Labouring Classes Lodging Houses Act, 1851, to be made—

(a.) Sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such byelaws are made by the

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<sup>1</sup> This section is in force so far as it relates to byelaws authorised by sections 7 to 9.



Metropolitan Board of Works or any nuisance authority in the Metropolis; and

- (b.) The provisions of the Public Health Act, 1875, relating to byelaws, where such byelaws are made by a sanitary authority, shall apply to such byelaws and a fine or penalty under any such byelaw may be recovered on summary conviction.

(2.) For the purposes of the execution of their duties under this Act the Local Government Board may hold such local inquiries as the Board see fit, and sections two hundred and ninety-three to two hundred and ninety-six both inclusive of the Public Health Act, 1875, relating to inquiries by such Board shall apply.

## WORKING CLASSES DWELLINGS ACT, 1890.

[53 & 54 VICT. CH. 16.]

An Act to facilitate Gifts of Land for Dwellings for the Working Classes in Populous Places.

[25th July 1890.]

**BE** it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and section sixteen of the Act of the session held in the seventh and eighth years of Her present Majesty, chapter ninety-seven, intituled "An Act for the more effectual application of charitable donations and bequests in Ireland," shall not apply to any assurance,

by deed or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place.

Provided as follows :—

- (i.) The quantity of land which may be assured by will under this section shall not exceed five acres ; and
- (ii.) The deed or will containing the assurance must, within six months, in the case of a deed after the execution thereof, or in the case of a will after the probate thereof, be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales, and the deed containing the assurance must, within six months after the execution thereof, be registered in the office for registering deeds in the city of Dublin, if the land is situate in Ireland.

For the purposes of this Act, the expression “populous place” means the administrative county of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character.

2. This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act.

3.—(1.) This Act may be cited as the Working Classes Dwellings Act, 1890.

(2.) Expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.

# HOUSING OF THE WORKING CLASSES ACT, 1890.

[53 & 54 Vict. CH. 70.]

An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes.

[18th August 1890.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Housing of the Working Classes Act, 1890.

## PART I.

### UNHEALTHY AREAS.

2. In this part of this Act—

The expression “this part of this Act” includes any confirming Act, and

The expression “the Acts relating to nuisances” means—

as respects the county of London and city of London, the Nuisances Removal Acts as defined by the Sanitary Act, 1866, and any Act amending these Acts ; and

as respects any urban sanitary district in England, the Public Health Acts ;

and in the case of any of the above-mentioned areas, includes any local Act which contains any provisions with respect to nuisances in that area.

3. This part of this Act shall not apply to rural sanitary districts.

*Scheme by Local Authority.*

4. Where an official representation as herein-after mentioned is made to the local authority that within a certain area in the district of such authority either—

- (a) any houses, courts, or alleys are unfit for human habitation, or
- (b) the narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses or groups of houses within such area, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings in the said area or of the neighbouring buildings :

and that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area cannot be effectually remedied otherwise than by an improvement scheme for the rearrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.

Provided always, that any number of such areas may be included in one improvement scheme.

5.—(1.) An official representation for the purposes of this part of this Act shall mean a representation made to the local authority by the medical officer of health of that authority, and in London made either by such officer or by any medical officer of health in London.

(2.) A medical officer of health shall make such representation whenever he sees cause to make the same : and if two or more justices of the peace acting within the district for which he acts as medical officer of health, or twelve or more persons liable to be rated to the local rate complain to him of the unhealthiness of any area within such district, it shall be the duty of the medical officer of health forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the said area or any part thereof is an unhealthy area or is not an unhealthy area.

6.—(1.) The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates, and

(a) may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; and

(b) may provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health : and

(c) shall provide such dwelling<sup>r</sup> accommodation, if any, for the working classes displaced by the scheme as is required to comply with this Act ; and

£ . (d) shall provide for proper sanitary arrangements.

f (2.) The scheme shall distinguish the lands proposed to be taken compulsorily.

(3.) The scheme may also provide for the scheme or any part thereof being carried out and effected by the

person entitled to the first estate of freehold in any property comprised in the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

*Confirmation of Scheme.*

7. Upon the completion of an improvement scheme the local authority shall--

- (a) publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper, circulating within the district of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours ; and
- (b) during the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands ;

(c) Such notice shall be served—

(i) by delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises ; or

(ii) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or

(iii) by post addressed to the usual or last known place of abode of such person ;

(d) One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

8.—(1.) Upon compliance with the foregoing provisions with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if it relates to any part of the county or city of London, to a Secretary of State, and if it relates to any other place, to the Local Government Board, praying that an order may be made confirming such scheme.

(2.) The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this part of this Act referred to as the confirming authority), may from time to time require.

(3.) If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area comprised in the scheme, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme.

(4.) After receiving the report made upon such inquiry the confirming authority may make a provisional order declaring the limits of the area comprised in the scheme and authorising such scheme to be carried into execution.

(5.) Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this part of this Act to be served, except tenants for a month or a less period than a month.

(6.) A provisional order made in pursuance of this section shall not be of any validity unless and until it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any Act confirming any provisional order made in pursuance of this part of this Act, with such modifications as may seem fit to Parliament, shall be a public General Act of Parliament, and is in this part of this Act referred to as the confirming Act.



(7.) The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

(8.) All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this part of this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this part of this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

(9.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

9.—(1.) Where any Bill for confirming a provisional order authorising an improvement scheme is referred to a Committee of either House of Parliament upon the petition of any person opposing such Bill, the Committee shall take into consideration the circumstances under which such opposition is made to the Bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by

the promoters or the opponents of the Bill as the Committee may think just.

(2.) Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty. chapter twenty-seven.

(3.) The decision of the majority of the members of the Committee for the time being present and voting on any question under this section shall be deemed to be the decision of the Committee.

10. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, the local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and, upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

*Provision of Dwelling Accommodation for Working Classes displaced by Scheme.*

11.—(1.) Subject as herein-after mentioned, every scheme comprising an area in the county or city of London shall provide for the accommodation of at least as many persons of the working class as may be displaced in the area comprised therein, in suitable dwellings, which, unless there are any special reasons to the contrary, shall

be situate within the limits of the same area, or in the vicinity thereof.

Provided that —

- (a.) Where it is proved to the satisfaction of the confirming authority on an application to authorise a scheme that equally convenient accommodation can be provided for any persons of the working classes displaced by the scheme at some place other than within the area or the immediate vicinity of the area comprised in the scheme, and that the required accommodation has been or is about to be forthwith provided, either by the local authority or by any other person or body of persons, the confirming authority may authorise such scheme, and the requirements of this section with respect to providing accommodation for persons of the working class shall be deemed to have been complied with to the extent to which accommodation is so provided ; and
- (b.) Where the local authority apply for a dispensation under this section, and the officer conducting the local inquiry directed by the confirming authority reports that it is expedient, having regard to the special circumstances of the locality and to the number of artisans and others belonging to the working class dwelling within the area, and being employed within a mile thereof, that a modification should be made, the confirming authority, without prejudice to any other powers conferred on it by this part of this Act, may in the Provisional Order authorising the scheme, dispense

altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by the scheme to such extent as the confirming authority may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one half of the persons so displaced.

(2.) Where a scheme comprises an area situate elsewhere than in the county or city of London, it shall, if the confirming authority so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working classes displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry may require.

*Execution of Scheme by Local Authority.*

12.—(1.) When the confirming Act authorising any improvement scheme of a local authority under this part of this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable.

(2.) They may sell or let all or any part of the area comprised in the scheme to any purchasers or lessees for the purpose and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution : and in

particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease.

(3.) The local authority may also engage with any body of trustees, society, or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

(4.) Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

(5.) If the local authority erect any dwellings out of funds to be provided under this part of this Act, they shall, unless the confirming authority otherwise

determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

(6.) The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying of the scheme into effect by him in respect of such land.

13. If within five years after the removal of any buildings on the land set aside by any scheme authorised by a confirming Act as sites for working men's dwellings, the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this part of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

14. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local

authority have made known, in manner required by this section, their intention to take such houses.

15.—(1.) The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme authorised by a confirming Act, may permit the local authority to modify any part of their improvement scheme which it may appear inexpedient to carry into execution, but any part of the scheme respecting the provision of dwelling accommodation for persons of the working class, when so modified, shall be such as might have been inserted in the original scheme.

(2.) A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after the permission is given, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament.

Provided always, that if such modification requires a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or affects injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, the modification must be made by a provisional order to be confirmed by Act of Parliament in the manner provided by this part of this Act on the completion of an improvement scheme.

*Inquiries with respect to Unhealthy Areas.*

16.—(1.) Where in any district twelve or more ratepayers have complained to a medical officer of health of the unhealthiness of any area within that district, and the medical officer of health has failed to

inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a legally qualified medical practitioner to inspect such area, and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area or any part thereof is or is not an unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it states that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority

(2.) The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the medical practitioner appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where he is of opinion that the area or any part thereof is an unhealthy area.

(3.) Any order made by the confirming authority in pursuance of this section may be made a rule of a superior court, and be enforced accordingly.

17. Where a local inquiry is directed, an officer shall be sent by the confirming authority to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area, and into the sufficiency of the scheme provided for its improvement, and into any local



objections to be made to such scheme, and to any other matter into which he is directed by this Act or the confirming authority to inquire for the purposes of this Act.

18. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

19. The officer conducting such inquiry shall have power to administer an oath; he shall report the result of the inquiry to the confirming authority, who shall deal with such report in such manner as they think expedient.

#### *Acquisition of Land.*

20. The clauses of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the Second Schedule to this Act, apply to any lands taken in pursuance of this part of this Act, but save as aforesaid the said Lands Clauses Acts, as amended by the provisions contained in the said schedule, shall regulate and apply to the purchase and taking of lands, and shall for that purpose be deemed to form part of this part of this Act in the same manner as if they were enacted in the body thereof; subject to the provisions of this part of this Act and to the provisions following; that is to say,

- (i.) This part of this Act shall authorise the taking by agreement of any lands which the local

authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily :

- (ii.) In the construction of the Lands Clauses Acts, and the provisions in the Second Schedule to this Act, this part of this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking ; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

**21.—(1.)** Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this part of this Act requires to be assessed—

- (a) the estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description

of property which may be constituted an unhealthy area under this part of this Act ; and

- (b) in such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this part of this Act of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands ; and

(2.) On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area evidence shall be receivable by the arbitrator to prove—

- (1st) that the rental of the house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates ; or
- (2ndly) that the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisances, or are in a state of defective sanitation, or are not in reasonably good repair : or
- (3rdly) that the house or premises are unfit, and not reasonably capable of being made fit, for human habitation :

and, if the arbitrator is satisfied by such evidence, then the compensation—

- (a) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the house or premises were occupied for legal purposes and only by the number of persons whom the house or premises were under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates ; and
- (b) shall in the second case be the amount estimated as the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be ; and
- (c) shall in the third case be the value of the land, and of the materials of the buildings thereon.

22. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the

manner in which compensation for lands is determinable under this part of this Act, or as near thereto as circumstances admit.

23. A local authority may, for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

*Expenses.*

24.—(1.) The receipts of a local authority under this part of this Act shall form a fund (in this Act referred to as “the Dwelling-house Improvement Fund”), and their expenditure shall be defrayed out of such fund.

(2.) The moneys required in the first instance to establish such fund, and any deficiency for the purposes of this part of this Act from time to time appearing in such fund by reason of the excess of expenditure over receipts, shall be supplied out of the local rates or out of moneys borrowed in pursuance of this Act.

(3.) In settling any accounts of the local authority in respect of any transactions under this part of this Act, care shall be taken that as far as may be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this part of this Act; and any balances of profit made by the local authority under this part of this Act shall be applicable to any purposes to which the local rate is for the time being applicable.

(4.) Any limit imposed on or in respect of local rates by any other Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses under this part of this Act.

(5.) The local authority may carry to the account of the Dwelling-house Improvement Fund any such money or produce of any property, as is legally applicable to purposes similar to the purposes of this part of this Act : and in case of doubt as to whether, in any particular case, the purposes are so similar the confirming authority may decide such doubt, and such decision shall be conclusive.

25.—(1.) A local authority may, in manner in this section mentioned, borrow such money as is required for the purposes of this part of this Act on the security of the local rate.

(2.) For the purpose of such borrowing, the London County Council may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works Loans Acts, 1869 to 1871, but all moneys required for the payment of the dividends on and the redemption of the consolidated stock created for the purposes of this part of this Act shall be charged to the special county account to which the expenditure for the purposes of this part of this Act is chargeable.

(3.) For the purpose of such borrowing, the Commissioners of Sewers for the City of London may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this part of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the Commissioners of Sewers, the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the Commissioners shall be incorporated with this part of this Act ; and in the construction of that Act " the special Act " shall mean

this part of this Act; the "commissioners" shall mean the Commissioners of Sewers; "the clerk of the commissioners" shall include any officer appointed for the purpose by the Commissioners of Sewers by this part of this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

(4.) For the purpose of such borrowing, the urban sanitary authority shall have the same power of borrowing as they have under the Public Health Acts for the purpose of defraying any expenses incurred by them in the execution of those Acts.

(5.) The Public Works Loan Commissioners may, on the recommendation of the confirming authority, lend to any local authority any money required by them for purposes of this part of this Act, on the security of the local rate. Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority.

#### *General Provisions.*

**26.** In case of the illness or unavoidable absence of a medical officer of health, the authority, board, or vestry who appointed him may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, for the period of six months, or any less period to be named in the appointment.

**27.** The confirming authority may by order prescribe the forms of advertisements and notices under this part of this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this part of this Act.

**28.** The confirming authority may, on the consideration of any petition of a local authority for an order

confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this part of this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

## PART II.

### UNHEALTHY DWELLING-HOUSES.

#### *Preliminary.*

**29.** In this part of this Act, unless the context otherwise requires—

The expression “street” includes any court, alley, street, square, or row of houses :

The expression “dwelling-house” means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith, and includes the site of the dwelling-house as so defined :

The expression “owner,” in addition to the definition given by the Lands Clauses Acts, includes all lessees or mortgagees of any premises required to be dealt with under this part of this Act, except persons holding or entitled to the rents and profits



of such premises for a term of years, of which twenty-one years do not remain unexpired :

The expression "closing order" means an order prohibiting the use of premises for human habitation made under the enactments set out in the Third Schedule in this Act.

*Buildings unfit for Human Habitation.*

**30.** It shall be the duty of the medical officer of health of every district to represent to the local authority of that district any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation.

**31.—(1.)** If in any district any four or more householders living in or near to any street complain in writing to the medical officer of health of that district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority.

**(2.)** If within three months after receiving the said complaint and opinion or representation of the medical officer, the local authority, not being in the administrative county of London, or not being a rural sanitary authority in any other county, declines or neglects to take any proceedings to put this part of this Act in force, the householders who signed such complaint may petition the Local Government Board for an inquiry, and the said Board after causing an inquiry to be held

may order the local authority to proceed under this part of this Act, and such order shall be binding on the local authority.

*Closing Order and Demolition.*

**32.—(1.)** It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation, and, if on the representation of the medical officer, or of any officer of such authority, or information given, any dwelling-house appears to them to be in such state, to forthwith take proceedings against the owner or occupier for closing the dwelling-house under the enactments set out in the Third Schedule to this Act.

(2.) Any such proceedings may be taken for the express purpose of causing the dwelling-house to be closed whether the same be occupied or not, and upon such proceedings the court of summary jurisdiction may impose a penalty not exceeding twenty pounds, and make a closing order, and the forms for the purposes of this section may be those in the Fourth Schedule to this Act, or to the like effect, and the enactments respecting an appeal from a closing order shall apply to the imposition of such penalty as well as to a closing order.

(3.) Where a closing order has been made as respects any dwelling-house, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding twenty shillings a day during his disobedience to

the order. Provided that the local authority may make to every such tenant such reasonable allowance on account of his expenses in removing, as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the dwelling-house to the local authority, and shall be recoverable summarily.

**33.—(1.)** Where a closing order has been made in respect of any dwelling-house, and not been determined by a subsequent order, then the local authority, if of opinion that the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, and that the continuance of any building being or being part of the dwelling-house is dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses, shall pass a resolution that it is expedient to order the demolition of the building.

**(2.)** The local authority shall cause notice of such resolution to be served on the owner of the dwelling-house, and such notice shall specify the time and place appointed by the local authority for the further consideration of the resolution, not being less than one month after the service of the notice, and any owner of the dwelling-house shall be at liberty to attend and state his objections to the demolition.

**(3.)** If upon the consideration of the resolution and the objections the local authority decide that it is expedient so to do, then, unless an owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation, the local authority shall order the demolition of the building.

(4.) If an owner undertakes as aforesaid to execute the said works, the local authority may order the execution of the works, within such reasonable time as is specified in the order, and if the works are not completed within that time or any extended time allowed by the local authority or a court of summary jurisdiction the local authority shall order the demolition of the building.

**34.**—(1.) Where an order for the demolition of a building has been made, the owner thereof shall within three months after service of the order proceed to take down and remove the building, and if the owner fails therein the local authority shall proceed to take down and remove the building and shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of money (if any) to the owner.

(2.) Where a building has been so taken down and removed, no house or other building or erection which will be dangerous or injurious to health shall be erected on all or any part of the site of such building; and if any house, building, or erection is erected contrary to the provisions of this section, the local authority may at any time order the owner thereof to abate the same, and in the event of non-compliance with the order, may at the expense of the owner abate or alter the same.

**35.**—(1.) Any person aggrieved by an order of the local authority under this part of this Act, may appeal against the same to a court of quarter sessions, and no work shall be done nor proceedings taken under any order until after the appeal is determined or ceases to be prosecuted; and section thirty-one of the Summary Jurisdiction Act, 1879, respecting appeals from courts of summary jurisdiction to courts of quarter sessions shall apply with the necessary modifications as if the

order of the local authority were an order of a court of summary jurisdiction.

(2) Provided that—

(a.) Notice of appeal may be given within one month after notice of the order of the local authority has been served on such person ;

(b.) The court shall, at the request of either party, state the facts specially for the determination of a superior court, in which case the proceedings may be removed into that court.

36.—(1.) Where any owner has completed in respect of any dwelling-house any works required to be executed by an order of a local authority under this part of this Act, he may apply to the local authority for a charging order, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts of and vouchers for the costs, charges, and expenses of the works, and the local authority, when satisfied that the owner has duly executed such works and of the amount of such costs, charges, and expenses, and of the costs of obtaining the charging order which have been properly incurred, shall make an order accordingly, charging on the dwelling-house an annuity to repay the amount.

(2.) The annuity charged shall be a sum of six pounds for every one hundred pounds of the said amount and so in proportion for any less sum, and shall commence from the date of the order, and be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

(3.) Every such annuity may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it

were a rentcharge granted by deed out of the dwelling-house by the owner thereof.

(4.) Charging orders made under this section shall be made according to the Form marked A. in the Fifth Schedule to this Act, or as near thereto as the circumstances of the case will admit.

**37.**—(1.) Every charge created by a charging order under this part of this Act shall be a charge on the dwelling-house specified in the order having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharge, and any charge created under any Act authorising advances of public money; and where more charges than one are charged under this part of this Act on any dwelling-house such charges shall, as between themselves, take order according to their respective dates.

(2.) A charging order shall be conclusive evidence that all notices, acts, and proceedings by this part of this Act directed with reference to or consequent on the obtaining of such order, or the making of such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the dwelling-house declared to be subject thereto.

(3.) Every such charging order, if it relates to a dwelling-house in the area to which the enactments relating to the registration of land in Middlesex apply or to a dwelling-house in Yorkshire, shall be registered in like manner as if the charge were made by deed by the absolute owner of the dwelling-house.

(4.) Copies of the charging order and of the certificate of the surveyor or engineer, and of the accounts as passed by the local authority, certified to be true copies

by the clerk of the local authority, shall within six months after the date of the order be deposited with the clerk of the peace of the county in which the dwelling-house is situate, and be by him filed and recorded.

(5.) The benefit of any such charge may be from time to time transferred in like manner as a mortgage or rentcharge may be transferred. Any transfer may be in the Form marked B. in the Fifth Schedule to this Act, or in any other convenient form.

*Obstructive Buildings.*

38.—(1.) If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

(a.) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health ; or

(b.) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings :

in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first-mentioned building (in this Act referred to as “an obstructive building”) stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2.) Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section.

(3.) The local authority on receiving any such representation as above in this section mentioned shall cause a report to be made to them respecting the circumstances of the building and the cost of pulling down the building and acquiring the land, and on receiving such report shall take into consideration the representation and report, and if they desire to proceed, shall cause a copy of both the representation and report to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof: and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this Act.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same: and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this part of this Act (subject nevertheless to the provisions of this part of this Act), and for the purpose of the provisions of the Lands Clauses Acts this part of this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking,



and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this Act.

(7.) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part.

(8.) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings

respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act.

(9.) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

(10.) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

(11.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive

within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect

(12) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

*Scheme for Reconstruction.*

39.—(1.) In any of the following cases, that is to say—

(a) where an order for the demolition of a building has been made in pursuance of this part of this Act, and it appears to the local authority that it would be beneficial to the health of the inhabitants of the neighbouring dwelling-houses if the area of the dwelling-house of which such building forms part were used for all or any of the following purposes, that is to say, either —

- (i) dedicated as a highway or open space, or
- (ii) appropriated, sold, or let for the erection of dwellings for the working classes, or
- (iii) exchanged with other neighbouring land which is more suitable for the erection of such dwellings, and on exchange will be appropriated, sold, or let for such erection ; or

(b) where it appears to the local authority that the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the

want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings is dangerous or prejudicial to the health of the inhabitants either of the the said buildings or of the neighbouring buildings, and that the demolition or the reconstruction and re-arrangement of the said buildings or of some of them is necessary to remedy the said evils, and that the area comprising those buildings and the yards, outhouses, and appurtenances thereof, and the site thereof, is too small to be dealt with as an unhealthy area under Part I. of this Act,

the local authority shall pass a resolution to the above effect and direct a scheme to be prepared for the improvement of the said area.

(2.) Notice of the scheme may at any time after the preparation thereof be served in manner provided in Part I. of this Act with respect to notices of lands proposed to be taken compulsorily under a scheme made in pursuance of that part of this Act, on every owner or reputed owner, lessee or reputed lessee, and occupier of any part of the area comprised in the scheme, so far as those persons can reasonably be ascertained.

(3.) The local authority shall, after service of such notice, petition the Local Government Board for an order sanctioning the scheme, and the Board may cause a local inquiry to be held, and, if satisfied on the report of such local inquiry that the carrying into effect of the scheme either absolutely, or subject to conditions or modifications would be beneficial to the health of the inhabitants of the said buildings or of the neighbouring dwelling-houses, may by order sanction the scheme with or without such conditions or modifications

(4.) Upon such order being made, the local authority may purchase by agreement the area comprised in the scheme as so sanctioned, and if they agree for the purchase of the whole area, the order, save so far as it provides for the taking of land otherwise than by agreement, shall take effect without confirmation. If they do not so agree, the order shall be published by the local authority by inserting a notice thereof in the London Gazette, and by serving notice thereof on the owners of every part of the area.

(5.) Any owner may, within two months after such publication, petition the Local Government Board against the order, and if such petition is presented and is not withdrawn, the order shall be provisional unless it is confirmed by Act of Parliament.

(6.) If the Local Government Board are satisfied that the order has been duly published, and that two months after such publication have expired, and that either a petition has not been presented, or if presented has been withdrawn, they shall confirm the order, and thereupon such order shall come into operation, and have effect as if it were enacted by this Act.

(7.) The order may incorporate the provisions of the Lands Clauses Acts, and for the purpose of those provisions this Act shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking, and the area shall be acquired within three years after the date of the confirmation of the order: Provided that the amount of compensation shall, in case of difference, be settled by arbitration in manner provided by this part of this Act.

(8.) The provisions of Part I. of this Act relating to costs to be awarded in certain cases by a committee of either House of Parliament, to the duty of a local authority to carry a scheme when confirmed into execution

to the completion of a scheme on failure by a local authority, and to the extinction of rights of way and other easements, shall, with the necessary modifications, apply for the purpose of any scheme under this section in like manner as if it were a scheme under Part I. of this Act.

(9.) The Local Government Board, on being satisfied by the local authority that an improvement can be made in the details of any scheme under this section, may by order permit the local authority to modify any part of the scheme which it may appear inexpedient to carry into execution : Provided that—

- (a) if the order sanctioning the scheme was confirmed by Parliament, a statement of such modification shall be laid by the Local Government Board before both Houses of Parliament as soon as practicable ; and
- (b) in any case, if the modification requires a larger expenditure than that sanctioned by the original scheme, or authorises the taking of any property otherwise than by agreement, or injuriously affects any property in a manner different from that proposed in the original scheme, without the consent of the owner or occupier of such property, notice of the order authorising the modification shall be published, and the order may be petitioned against and shall be subject to confirmation in like manner as if it were an order sanctioning an original scheme under this section.

40. The Local Government Board shall in any order sanctioning a scheme under this part of this Act require the insertion in the scheme of such provisions (if any) for the dwelling accommodation of persons of the

working classes displaced by the scheme as seem to the Board required by the circumstances.

*Settlement of Compensation.*

41. In all cases in which the amount of any compensation is, in pursuance of this part of this Act, to be settled by arbitration, the following provisions shall have effect : (namely,)

- (1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board.
- (2.) In settling the amount of any compensation—
  - (a) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase ; and
  - (b) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.
- (3.) Evidence shall be receivable by the arbitrator to prove—
  - (1st) that the rental of the dwelling-house was enhanced by reason of the same

being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates ; or

(2ndly) that the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair ; or

(3rdly) that the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation ;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates ; and

(b) shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair ; and

(c) shall in the third case be the value of the land, and of the materials of the buildings thereon.

(4.) On payment or tender to the person entitled to receive the same of the amount of compen-



sation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct ; and in default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

- (5.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this part of this Act.
- (6.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority ; but he may, and, if the local authority request him so to do, shall, from time to time make an award respecting a portion only of the disputed cases brought before him.
- (7.) In the event of the death, removal, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered.

- (8.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.
- (9.) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to any party where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.
- (10.) If within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.
- (11.) The award of the arbitrator shall be final and binding on all parties.

*Expenses and Borrowing.*

42.—(1.) All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed by them out of the local rate: and that authority,

notwithstanding any limit contained in any Act of Parliament respecting a local rate, may levy such local rate, or any increase thereof, for the purposes of this part of this Act.

(2.) Any expenses incurred by a rural sanitary authority under this part of this Act, other than the expenses incurred in and incidental to proceedings for obtaining a closing order, shall be charged as special expenses on the contributory place in respect of which they are incurred.

43.—(1.) A local authority may borrow for the purpose of raising sums required for purchase money or compensation payable under this part of this Act in like manner, and subject to the like conditions, as for the purpose of defraying the expenses of the execution by such authority of the Public Health Acts.

(2.) The Public Works Loan Commissioners may, if they think fit, lend to any local authority the sums borrowed in pursuance of this part of this Act.

44. Every local authority shall every year present to the Local Government Board, in such form as they may direct, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this part of this Act.

#### *Powers of County Councils.*

45.—(1.) Where the medical officer of health or any inhabitant householders make a representation or complaint, or give information to any vestry or district board in the administrative county of London or to the local board of Woolwich, or to any rural sanitary authority elsewhere (which vestry, board, or authority is in this Act referred to as the district authority) or to the

medical officer of such authority either respecting any dwelling-house being in a state so dangerous or injurious to health as to be unfit for human habitation, or respecting an obstructive building, and also where a closing order has been made as respects any dwelling-house, the district authority shall forthwith forward to the county council of the county in which the dwelling-house or building is situate, a copy of such representation, complaint, information, or closing order, and shall from time to time report to the council such particulars as the council require respecting any proceedings taken by the authority with reference to such representation, complaint, information, or dwelling-house.

(2.) Where the county council—

- (a) are of opinion that proceedings for a closing order as respects any dwelling-house ought to be instituted, or that an order ought to be made for the demolition of any buildings forming or forming part of any dwelling-house as to which a closing order has been made, or that an order ought to be made for pulling down an obstructive building specified in any representation under this part of this Act ; and
- (b) after reasonable notice, not being less than one month, of such opinion has been given in writing to the district authority, consider that such authority has failed to institute or properly prosecute proceedings, or to make the order for demolition, or to take steps for pulling down an obstructive building ;

the council may pass a resolution to that effect, and thereupon the powers of the district authority as respects the said dwelling-house and building under this part of

this Act (otherwise than in respect of a scheme), shall be vested in the county council, and if a closing order or an order for demolition or for pulling down an obstructive building is made, and not disallowed on appeal, the expenses of the council incurred as respects the said dwelling-house and building, including any compensation paid, shall be a simple contract debt to the council from the district authority.

(3.) Any debt to the council under this section shall be defrayed by the district authority as part of their expenses in the execution of this part of this Act.

(4.) The county council and any of their officers shall, for the purposes of this section, have the same right of admission to any premises as any district authority or their officers have for the purpose of the execution of their duties under the enactments relating to public health, and a justice may make the like order for enforcing such admission.

*Special Provisions as to London.*

46. This part of this Act shall apply to the administrative county of London with the following modifications :—

(1.) The provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates shall, for the purpose of this part of this Act, extend to the county and to the city of London, and in the construction of the said provisions, as respects the county of London, any local authority in that county, and as respects the city of London the Commissioners of Sewers, shall be deemed to be the urban authority.

(2.) The raising of sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which the

London County Council or the Commissioners of Sewers of the city of London, may borrow under Part One of this Act, and a purpose for which a vestry or district board may borrow under the Metropolis Management Act, 1855, and the provisions of Part One of this Act with respect to borrowing, and sections one hundred and eighty-three to one hundred and ninety-one of the Metropolis Management Act, 1855, shall apply and have effect accordingly.

- (3.) The London County Council may, if they think fit, lend to a local authority in the administrative county of London the sums borrowed in pursuance of this part of this Act.
- (4.) For the purpose of the assent required for the sale of any portion of the site of an obstructive building by a local authority, and of the account to be presented by a local authority of what has been done by them and of moneys received and paid by them during the previous year a Secretary of State shall be substituted for the Local Government Board.
- (5.) Where it appears to the county council, whether in the exercise of the powers of a vestry or district board or on the representation of a vestry or district board or otherwise, that a scheme under this part of this Act ought to be made, the council may take proceedings for preparing and obtaining the confirmation of a scheme, and the provisions of this Act respecting the scheme shall apply in like manner as if they were the vestry or district board, and all expenses of and incidental to the scheme and carrying the same into effect shall, save as herein-after mentioned, be borne by the county fund.

- (6.) Where the council consider that such expenses, or a contribution in respect of them, ought to be paid or made by a vestry or district board, they may apply to a Secretary of State, and the Secretary of State if satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the vestry or district board ought to pay, or make a contribution in respect of, the said expenses, the Secretary of State may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the vestry or district board to the council.
- (7.) The county council may, if they think fit, pay or contribute to the payment of the expenses of carrying into effect a scheme under this part of this Act by a vestry or district board, and if a vestry or district board consider that the expenses of carrying into effect any scheme under this part of this Act, or a contribution in respect of those expenses, ought to be paid or made by the county council, and the county council decline or fail to agree to pay or make the same, the vestry or district board may apply to a Secretary of State, and if the Secretary of State is satisfied that, having regard to the size of the area, to the number, position, structure, sanitary condition, and neighbourhood of the buildings to be dealt with, the council ought to pay or make a contribution in respect of the said expenses, he may order such payment or contribution to be made, and the amount thereof shall be a simple contract debt from the council to the vestry or district board.

- (8.) In the application of this section to Woolwich, the local board of health shall be deemed to be a district board, but the raising of any sums required for purchase money or compensation payable under this part of this Act shall be a purpose for which they may borrow under the Public Health Acts, and the Public Health Acts shall apply accordingly.

*Supplemental.*

47.—(1.) Where an owner of any dwelling-house is not the person in receipt of the rents and profits thereof, he may give notice of such ownership to the local authority, and thereupon the local authority shall give such owner notice of any proceedings taken by them in pursuance of this part of this Act in relation to such dwelling-house.

(2.) If it appears to a court of summary jurisdiction on the application of any owner of the dwelling-house that default is being made in the execution of any works required to be executed on any dwelling-house in respect of which a closing order has been made, or in the demolition of any building or any dwelling-house or in claiming to retain any site, in pursuance of this part of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the court may make an order empowering the applicant forthwith to enter on the dwelling-house, and within the time fixed by the order to execute the said works, or to demolish the building or to claim to retain the site, as the case may be, and where it seems to the court just so to do, the court may make a like order in favour of any other owner.

(3.) A court of summary jurisdiction may in any case by order enlarge the time allowed under any order for the execution of any works or the demolition of a



building, or the time within which a claim may be made to retain the site of a building.

(4.) Before an order is made under this section notice of the application shall be given to the local authority.

48. Nothing in this part of this Act shall prejudice or interfere with the right or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any dwelling-house in respect of which an order is made by a local authority under this part of this Act ; and if any owner is obliged to take possession of any dwelling-house in order to comply with any such order, the taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

49.—(1.) Where the owner of any dwelling-house and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the residence or place of business is within the district of such local authority, to serve any notice by this part of this Act required to be served on the owner, by giving it to him, or for him, to some inmate of his residence or place of business within the district ; and in any other case it shall be the duty of the clerk of the local authority to serve the notice by post in a registered letter addressed to the owner at his residence or place of business.

(2.) Where the owner of the dwelling house or his residence or place of business is not known to, and after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the dwelling-house, or if there be not an

occupier, then by causing it to be put up on some conspicuous part of the dwelling-house.

(3.) Notice served upon the agent of the owner shall be deemed notice to the owner.

50. Where in any proceedings under this part of this Act it is necessary to refer to the owner of any dwelling-house, it shall be sufficient to designate him as the "owner" thereof without name or further description.

51. (1) If any person being the occupier of any dwelling-house prevents the owner thereof, or being the owner or occupier of any dwelling house prevents the medical officer of health or the officers, agents, servants, or workmen of such owner or officer from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act, after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things requisite for carrying into effect, with respect to such dwelling house, the provisions of this part of this Act.

(2.) If at the expiration of ten days after the service of such order such person fails to comply therewith, he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding twenty pounds: Provided that if any such failure is by the occupier the owner, unless assenting thereto, shall not be liable to such fine.

52. A representation from the medical officer of health of any county submitted to the county council and forwarded by that council to the local authority of any district in the county, not being a borough as defined by the Municipal Corporations Act, 1882, shall, for the purposes of this part of this Act, have the like

effect as a representation from the medical officer of health of the district.

## PART III.

### WORKING CLASS LODGING HOUSES.

#### *Adoption of Part III.*

53.—(1.) The expression “lodging houses for the working classes” when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

(2.) The expression “cottage” in this part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds.

54. This part of this Act may be adopted in the several districts mentioned in the First Schedule to this Act by the local authorities in that behalf in that schedule mentioned: [Provided that in the case of any rural sanitary district in England, the adoption shall be only after such certificate and such delay as herein-after mentioned.]<sup>1</sup>

55.<sup>2</sup> . . . . .

#### *Execution of Part III. by Local Authority.*

56. Where this part of this Act has been adopted in any district, the local authority shall have power to carry it into execution (subject to the provisions of this part of this Act with respect to rural sanitary authorities), and for that purpose may exercise the

<sup>1</sup> The part in brackets is repealed by the Schedule, 63 & 64 Vict. c. 59, 1900, p.

<sup>2</sup> Repealed by the Schedule, 63 & 64 Vict. c. 59.

same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.

57.—(1.) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board.

(2.) The local authority may, if they think fit, contract for the purchase or lease of any lodging houses for the working classes already, or hereafter to be built and provided.

(3.) The local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this part of this Act, any lodging houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.

58. The trustees of any lodging houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may,

with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging houses to the local authority of the district, or make over to them the management thereof.

**59.** The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging houses for the working classes, and convert any buildings into lodging houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

**60.** A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this part of this Act, either with or without paying or receiving any money for equality of exchange.

#### *Management of Lodging Houses.*

**61.—(1.)** The general management, regulation, and control of the lodging houses established or acquired by a local authority under this part of this Act shall be vested in and exercised by the local authority.

**(2.)** The local authority may make such reasonable charges for the tenancy or occupation of the lodging houses provided under this part of this Act as they may determine by regulations.

62.—(1.) The local authority may make byelaws for the management, use, and regulation of the lodging houses, and it shall be obligatory on the local authority, except in the case of a lodging house which is occupied as a separate dwelling, by such byelaws to make sufficient provision for the several purposes expressed in the Sixth Schedule to this Act.

(2.) A printed copy or sufficient abstract of the byelaws relating to the management, use, and regulation of the lodging houses shall be put up and at all times kept in every room therein.

63. Any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging house, or any part of such a lodging house, receives any relief under the Acts relating to the relief of the poor other than relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier.

64. Whenever any lodging houses established for seven years or upwards under the authority of this part of this Act are determined by the local authority to be unnecessary or too expensive to be kept up, the local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the lodging houses are situate, sell the same for the best price that can reasonably be obtained for the same, and the local authority shall convey the same accordingly.

*Expenses and Borrowing of Local Authorities.*

65. All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed—

- (i) in the case of an authority in the administrative county of London, out of the Dwelling House Improvement Fund under Part I. of this Act ;
- (ii) in the case of an urban sanitary authority, as part of the general expenses of their execution of the Public Health Acts ; and
- (iii) in the case of a rural sanitary authority, as special expenses incurred in the execution of the Public Health Acts, [and, save where the burden of such expenses is by order of the county council who published the certificate to be borne by one contributory place only, shall be deemed to be incurred for the common benefit of all the contributory places liable to bear such expenses].<sup>1</sup>

Provided that if on the application of the rural sanitary authority it is so declared [at the time of the publication of the certificate]<sup>1</sup> by the county council [who published the same.]<sup>1</sup> then the said expenses of the rural sanitary authority shall be defrayed as general expenses of the said authority in the execution of the Public Health Acts, and if such expenses are not to be borne by the whole of the district, shall be paid out of a common fund to be raised in manner provided by the Public Health Act, 1875, but as if the contributory places which are to bear those expenses constituted the whole of the district.

**66.** The London County Council and the Commissioners of Sewers may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as they may borrow for

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<sup>1</sup> The words in brackets are repealed by the Schedule, 63 & 64 Vict. c. 59.

the purposes of Part I. of this Act, and a sanitary authority may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses.

*Loans to and Powers of Companies, Societies, and  
Individuals.*

**67.**—(1.) In addition to the powers conferred upon them by any other enactment, the Public Works Loan Commissioners may, out of the funds at their disposal, advance on loan to any such body or proprietor as herein-after mentioned; namely,—

(a) any railway company or dock or harbour company, or any other company, society, or association established for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes, or for trading or manufacturing purposes (in the course of whose business, or in the discharge of whose duties persons of the working classes are employed);

(b) any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired;

and any such body or proprietor may borrow from the Public Works Loan Commissioners such money as may be required for the purpose of constructing or improving, or of facilitating or encouraging the construction or improvement of dwellings for the working classes.



(2.) Such loans shall be made in manner provided by the Public Works Loans Act, 1875, subject to the following provisions :—

- (a) Any such advance may be made whether the body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act; but nothing in this Act shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up.
- (b) The period for the repayment of the sums advanced shall not exceed forty years.
- (c) No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple, or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance.
- (d) The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged: but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such advances so to be made from time to time.

(3.) For the purpose of constructing or improving or facilitating or encouraging the construction or improvement of dwellings for the working classes, every such body as aforesaid is hereby authorised to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this part of this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

68. Any railway company, or dock, or harbour company or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the working class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorised at any time to erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the working class employed by them.

69. Any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for lodging houses provided under this part of this Act, either without charge or on such other favourable terms as they think fit.

70. A lodging house established in any district under this part of this Act, shall be at all times open to the inspection of the local authority of that district or

of any officer from time to time authorised by such authority.

71. Any fine for the breach of any by-law under this part of this Act shall be paid to the credit of the funds out of which the expenses of this part of this Act are defrayed.

## PART IV.

### SUPPLEMENTAL.

72. Where an official representation made to the London County Council in pursuance of Part I. of this Act relates to not more than ten houses, the London County Council shall not take any proceedings on such representation, but shall direct the medical officer of health making the same to represent the case to the local authority under Part II. of this Act, and it shall be the duty of the local authority to deal with such case in manner provided by that part of this Act.

73.—(1.) In either of the following cases:—

(a) Where a medical officer of health has represented to any local authority in the county of London under Part II. of this Act that any dwelling-houses are in a condition so dangerous or injurious to health, as to be unfit for human habitation, or that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such dwelling-houses or buildings is of such general importance to the county of London that it should be dealt with by a scheme under Part I. of this Act; or

(b) Where an official representation as mentioned in Part I. of this Act has been made to the London County Council in relation to any

houses, courts, or alleys within a certain area, and that council resolve that the case of such houses, courts, or alleys is not of general importance to the county of London and should be dealt with under Part II. of this Act ;

such local authority or council may submit such resolution to a Secretary of State, and thereupon the Secretary of State may appoint an arbitrator, and direct him to hold a local inquiry, and such arbitrator shall hold such inquiry, and report to the Secretary of State as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of Part I. of this Act, the case is either wholly or partially of any and what importance to the county of London, with power to such arbitrator to report that in the event of the case being dealt with under Part II. of this Act, the London County Council ought to make a contribution in respect of the expense of dealing with the case.

(2.) The Secretary of State, after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under Part II. of this Act, or under Part I. of this Act, and the medical officer of health or other proper officer shall forthwith make the representation necessary for proceedings in accordance with such decision.

**74.**—(1.) The Settled Land Act, 1882, shall be amended as follows :—

- (a) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent,

as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

- (b) The improvements on which capital money may be expended enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate.

(2.) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

**75.** In any contract made after the fourteenth day of August one thousand eight hundred and eighty-five for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. In this section the expression "letting for habitation by persons of the working classes" means the letting for habitation of a house or part of a house

at a rent not exceeding in England the sum named as the limit for the composition of rates by section three of the Poor Rate Assessment and Collection Act, 1869, and in Scotland or Ireland four pounds.

**76.**—(1.) The London County Council may, with the consent of a Secretary of State, at any time appoint one or more legally qualified practitioner or practitioners, with such remuneration as they think fit, for the purpose of carrying into effect any part of this Act.

(2.) Any medical officer of health appointed by the London County Council, and any officer appointed under this section by the London County Council, shall be deemed to be a medical officer of health of a local authority within the meaning of this Act.

**77.** Any person authorised by the local authority may at all reasonable times of the day, on giving twenty-four hours notice in writing to the occupier of his intention so to do, enter any dwelling-house, premises, or building which the local authority are authorised to purchase compulsorily under Part I. or Part II. of this Act for the purpose of surveying and valuing such dwelling-house, premises, or building.

**78.** Where a building or any part of a building purchased by the local authority in pursuance of a scheme under Part I. or Part II. of this Act is not closed by a closing order, and is occupied by any tenant whose contract of tenancy is for less than a year, the local authority, if they require him to give up possession of such building or part for the purpose of pulling down the building, may make to the said tenant a reasonable allowance on account of his expenses in removing.

**79.**—(1.) Anything which under Part I. or Part II. of this Act is authorised or required to be done by or to a medical officer of health may be done by or

to any person authorised to act temporarily as such medical officer of health.

(2.) Every representation made by a medical officer of health in pursuance of this Act shall be in writing.

**80.**—(1.) Separate accounts shall be kept by the local authority and their officers of their receipts and expenditure under each part of this Act.

(2.) Such accounts shall be audited in the like manner and with the like power to the officer auditing the same, and with the like incidents and consequences, as the accounts of the local authority are for the time being required to be audited by law.

**81.** For the purposes of this Act, a local authority acting under this Act may appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

**82.** Where a local authority sell any land acquired by them for any of the purposes of this Act, the proceeds of the sale shall be applied for any purpose, including repayment of borrowed money, for which capital money may be applied, and which is approved by the Local Government Board.

**83.** Any loan advanced by the Public Works Loan Commissioners in pursuance of this Act or for labourers' dwellings in pursuance of the Public Works Loans Act, 1875, or any Act amending the same, shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may from

time to time authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer.

84. With respect to byelaws authorised by this Act to be made—

(a) sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such byelaws are made by the London County Council, or any nuisance authority in the administrative county of London : and

(b) the provisions of the Public Health Act, 1875, relating to byelaws, where such byelaws are made by a sanitary authority,

shall apply to such byelaws, and a fine or penalty under any such byelaw may be recovered on summary conviction.

85. - (1.) For the purposes of the execution of their duties under this Act the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board or confirming authority engaged in the inquiry not exceeding three guineas a day, shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board or confirming authority may direct, and that Board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.



(2.) Sections two hundred and ninety-three to two hundred and ninety six and section two hundred and ninety eight of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board or any local inquiry which that Board cause to be held in pursuance of any part of this Act.

**86.**—(1.) An order in writing made by a local authority under this Act shall be under their seal and authenticated by the signature of their clerk or his lawful deputy.

(2.) A notice, demand, or other written document proceeding from the local authority under this Act shall be signed by their clerk or his lawful deputy.

**87.** Any notice, summons, writ or other proceeding at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of this Act, or any of them, may be served upon that authority by delivering the same to their clerk, or leaving the same at his office with some person employed there.

**88.**—(1.) A person shall not vote as member of a local authority or county council or any committee thereof upon any resolution or question which is proposed or arises in pursuance of Part I. or Part II. of this Act, if it relates to any dwelling-house, building, or land in which he is beneficially interested.

(2.) If any person votes in contravention of this section he shall, on summary conviction, be liable for each offence to a fine not exceeding fifty pounds; but the fact of his giving the vote shall not invalidate any resolution or proceeding of the local authority or county council.

**89.** Where any person obstructs the medical officer of health, or any officer of the local authority, or of the

confirming authority mentioned in Part I. of this Act, in the performance of anything which such officer or authority is by this Act required or authorised to do, such person shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

**90.** Offences under this Act punishable on summary conviction may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Acts.

**91.** All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed, and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that a local authority shall not, by reason of any local Act relating to a place within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under any part of this Act.

**92.** In this Act, unless the context otherwise requires, "district," "local authority," and "local rate," mean respectively the areas, bodies of persons, and rates specified in the table contained in the First Schedule to this Act, but in Part III. of this Act and in reference to any power given by that part, or any act to be done in pursuance thereof shall mean such area, bodies of persons, and rate only in cases where that part of this Act is adopted or being adopted.

**93.** In this Act, unless the context otherwise requires—

The expression "land" includes any right over land :

The expression "sanitary district" means the district of a sanitary authority.

The expression "sanitary authority" means an urban sanitary authority or a rural sanitary authority :

The expressions "urban sanitary authority" and "rural sanitary authority" and "contributory place" have respectively the same meanings as in the Public Health Act, 1875 :

The expression "superior court" means the Supreme Court :

The expression "county of London," except where specified to be the administrative county of London, means the county of London exclusive of the city of London.

## PART V.

### APPLICATION OF ACT TO SCOTLAND.

In the application of this Act to Scotland the following provisions shall have effect—

**94.**—(1.) A reference to any sections of the Lands Clauses Consolidation Act, 1845, shall be construed to mean a reference to the corresponding sections of the Lands Clauses Consolidation (Scotland) Act, 1845.

(2.) Where a dispute under this Act is to be settled by two justices in manner provided by the Lands Clauses Acts in cases where the compensation claimed in respect of lands does not exceed fifty pounds such dispute shall be settled in Scotland by the sheriff in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in similar cases.

(3.) The Public Health (Scotland) Act, 1867, and the Acts amending the same shall be substituted for the Public Health Acts, and in particular—

(a) With respect to the purchase of land a reference to section ninety of the said Public Health

(Scotland) Act, 1867, shall be substituted for a reference to sections one hundred and seventy-five to one hundred and seventy eight of the Public Health Act, 1875 :

(b) Local inquiries by the Board of Supervision shall be held under sections ten to thirteen of the Public Health (Scotland) Act, 1867, and local inquiries by the Secretary for Scotland under the Local Government (Scotland) Act, 1889, and the provisions of sub-section one of section eighty-five of this Act shall apply to such inquiries by the Board of Supervision :

(c) The provisions as to private improvement expenses and the defraying thereof shall not apply to Scotland ; and the local authority shall be entitled to recover in a summary manner the amount apportioned to any building in respect of its increase in value by reason of the demolition of any obstructive building, from the owner or occupier thereof, according to their respective interests in such increase of value.

(4.) The Acts relating to nuisances mean, as respects any place in Scotland, the Public Health (Scotland) Act, 1867, and any Act amending the same, and the Local Government (Scotland) Act, 1889, and any local Act which contains any provisions with respect to nuisances in that place.

**95.**—(1.) A charging order under Part II. of this Act shall be recorded in the appropriate register of sasines.

(2.) Superior court means in Scotland the Court of Session, and where any order, certificate, or other act under this Act may be made a rule of a superior court, the Court of Session in Scotland may, on the application

of the Lord Advocate, on behalf of the confirming authority, or on the application of any person interested interpose their authority to any such order, certificate, or act, and grant decree conform thereto upon which execution and diligence may proceed in common form.

(3.) An appeal from an order of a local authority under Part II. of this Act shall, in Scotland, be to the sheriff, and the same procedure shall apply as on an appeal from the sheriff substitute to the sheriff, but with the same provisos as apply to the appeal in England from the order of the local authority to a court of quarter sessions.

(4.) Offences under this Act punishable on summary conviction may be prosecuted and fines recovered before the sheriff or two justices or in burghs before the magistrates in manner provided by the Summary Jurisdiction (Scotland) Acts, and all necessary jurisdiction is hereby conferred on such sheriff or two justices, or any two magistrates of a burgh.

**96.**—(1.) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "the Secretary for Scotland" were substituted, except that the provisions of this Act with respect to the adoption and execution of Part III. of this Act by a rural sanitary authority shall apply to the adoption and execution thereof by a local authority, being a district committee, and the Board of Supervision for the Relief of the Poor in Scotland shall be substituted in the said Part for the county council.

(2.) The expenses incurred by a local authority under this Act may be defrayed in the same manner as general expenses under section ninety-four, sub-section two, of the Public Health (Scotland) Act, 1867, and money may be borrowed for the purposes of this Act in the same manner and subject to the same conditions as

nearly as may be as money may be borrowed for the erection of hospitals under the Public Health (Scotland) Amendment Act, 1871, [and any Acts amending the same] :<sup>1</sup> provided that [in the case of a rural sanitary authority]<sup>1</sup> the assessment therefor shall be levied only within the parish or parishes in respect of which such expenses are incurred.

(3.) The Edinburgh Gazette shall be substituted for the London Gazette.

(4.) The expression "medical officer of health" means medical officer.

(5.) The expression "person entitled to the first estate of freehold in" means owner of.

(6.) The expression "court of quarter sessions" means the sheriff.

(7.) The expression "urban sanitary authority" means the local authority under the Public Health (Scotland) Act, 1867, being a town council or police commissioners or trustees exercising the functions of police commissioners.

(8.) The expression "rural sanitary authority" means a district committee, or where a county has not been divided into districts under the Local Government (Scotland) Act, 1889, the county council.

(9.) The expression "contributory place" means a parish.

(10.) The expression "court of summary jurisdiction" means the sheriff or any two justices of the peace sitting in open court, or any magistrate or magistrates within the meaning of the Summary Jurisdiction Acts.

(11.) The expression "executors, administrators, or assigns" means heirs, executors, or assignees.

(12.) The expression "mortgage" means bond and disposition in security.

(13.) The reference to quitrents and other charges incident to tenure, and to the commutation rentcharge shall be read as applicable to ten duties, casualties, and teinds.

(14.) With respect to byelaws authorised by this Act to be made, the provisions of the Public Health (Scotland) Act, 1867, relating to rules and regulations for common lodging-houses shall apply to such byelaws with the necessary variations, and a fine or penalty under any such byelaw may be recovered on summary conviction.

(15.) An order in writing made by a local authority under this Act, where such local authority have not a seal, shall be authenticated by the signature of any two or more members of the local authority and of their clerk or his lawful deputy.

(16.) The provisions of Part II. of this Act with respect to the powers of county councils shall not apply to Scotland.

**97.—(1.)** The superior of any lands and heritages may give notice of his right of superiority to the local authority, and thereupon the local authority shall give such superior notice of any proceedings taken by them in pursuance of Part II. of this Act in relation to such lands and heritages.

(2.) If it appears to the sheriff, on the application of such superior, that default is being made in the execution of any works required to be executed on such lands and heritages in respect of which a closing order has been made, or in the demolition of a building on such lands and heritages, or in claiming to retain any site, in pursuance of Part II. of this Act, and that the interests of the applicant will be prejudiced by such default, and that it is just to make the order, the sheriff may make

an order empowering the applicant forthwith to enter on the lands and heritages, and within the time fixed by the order to execute the said works, or to demolish the building, or to claim to retain the site, as the case may be.

(3.) The sheriff may in any case, by order, enlarge the time allowed under any order for the execution of any works or the demolition of a building, or the time within which a claim may be made to retain the site of a building.

(4.) Before an order is made under this section notice of the application shall be given to the local authority.

## PART VI.

### APPLICATION OF ACT TO IRELAND.

98. In the application of this Act to Ireland the following provisions shall have effect

- (1.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular the references in this Act to sections one hundred and seventy-five, one hundred and seventy-six, and one hundred and seventy-seven of the Public Health Act, 1875, shall be respectively taken to be references to sections two hundred and two, two hundred and three, and two hundred and four, respectively, of the Public Health (Ireland) Act, 1878, and the reference to sections two hundred and ninety-three to two hundred and ninety-six, two hundred and ninety-eight of the Public Health Act, 1875, shall be taken to be a reference to sections two hundred and nine, two hundred and ten, two hundred and twelve, two hundred and thirteen, and two hundred



- and fifteen of the Public Health (Ireland) Act, 1878.
- (2.) The Acts relating to nuisances means as respects any place in Ireland the Public Health (Ireland) Act, 1878, and any local Act which contains any provisions with respect to nuisances in that place.
  - (3.) The expression "quarter sessions" means, in towns and boroughs where there are separate quarter sessions, the quarter sessions of the said towns and boroughs, and in towns and boroughs where there are no separate quarter sessions, the quarter sessions of the division of the counties in which such towns or boroughs are situate.
  - (4.) The provisions of section twenty-four of the Petty Sessions (Ireland) Act, 1851, respecting appeals from courts of summary jurisdiction authorised by that section, and any enactment amending the same, shall in Ireland apply in the case of appeals from an order of a local authority to a court of quarter sessions under Part II. of this Act, as if such order was an order of a court of summary jurisdiction, but with the same provisoes as apply under this Act in the case of such an appeal in England.
  - (5.) The Local Government Board for Ireland shall be substituted for the Local Government Board.
  - (6.) The Commissioners of Public Works in Ireland acting with the consent of the Treasury shall be substituted for the Public Works Loan Commissioners.
  - (7.) The medical officer of health in Ireland shall include the medical superintendent officer of

health appointed under the Public Health (Ireland) Act, 1878.

- (8.) The Dublin Gazette shall be substituted for the London Gazette.
- (9.) Every charging order under Part II. of this Act shall be registered in the office for registering deeds, conveyances, and wills in Ireland.
- (10.) An order in writing made by a local authority under this Act, where such local authority have not a seal, shall be authenticated by the signature of any two or more members of the local authority and of their clerk or his lawful deputy.
- (11.) The accounts of the local authority under this Act shall be audited in the like manner and with the like power to the officer auditing the same, and with the like incidents and consequences, as the accounts of that authority as a sanitary authority are for the time being required to be audited by law.
- (12.) The consent of the Treasury shall in Ireland be substituted for the consent of the Local Government Board required under Part III. of this Act to the appropriation of land for lodging houses, to the sale and exchange of land, and to the sale of lodging houses when considered too expensive.

**99.**—(1.) In a town not being an urban sanitary district Part III. of this Act may be adopted by any town commissioners for the time being existing for the paving, lighting, or cleansing of that town under any Public Act of Parliament or any charter, and the Act when adopted shall be carried into execution by such town commissioners, and for that purpose they shall be

deemed to be a local authority within the meaning of the said part.

(2.) Such commissioners shall give not less than twenty-eight nor more than forty-two days public notice of their intention to take into consideration the propriety of adopting the said part of this Act, and of the time and place for holding the meeting when they will take it into consideration.

(3.) If at that meeting there is presented to the commissioners a memorial in writing signed by not less than one-tenth in value of the persons liable to be rated to rates made by such commissioners requesting them to postpone the said consideration for a period of one year, then the consideration shall be so postponed, and shall be entered upon as soon after the expiration of the year as the commissioners think fit.

(4.) If the said part of this Act is adopted, the local rate shall be any rate which the commissioners have power to impose for the purpose of paving, lighting, cleansing, or otherwise improving the town, and such rate may, with the approval of the Treasury, be increased for the purpose.

(5.) The net income arising from any lodging houses or dwellings provided by the commissioners in pursuance of the said part of this Act, after the payment of all outgoings, including the interest and instalments of principal of any loan, shall be paid to the town commissioners fund, or otherwise in aid of the rates which have been applied to the payment of the expenses.

**100.** Sections fifty-six to sixty-four, both inclusive, and sections ninety-nine to one hundred and three, both inclusive, of the Commissioners Clauses Act, 1847, shall be incorporated with Part III. of this Act, so far as regards any town commissioners or any dock or harbour company or commissioners; and in the construction of

the said sections for the purposes of the part of this Act with which they are so incorporated, the expression "commissioners" shall mean any such commissioners or company as aforesaid, and the expression "special Act" shall mean this Act.

**101.**—(1.) Any company, society, or association establishing lodging houses in pursuance of Part III. of this Act shall have the same power of making byelaws for the regulation of such lodging houses as a local authority have under the said part.

(2.) Any byelaw made for the regulation of lodging houses in pursuance of Part III. of this Act shall not be valid until approved by the Local Government Board, and a production of a copy of the byelaws purporting to be sealed with the seal of the Local Government Board and signed by the President or by the Under Secretary to the Lord Lieutenant or by the Vice-President, or by two other members of the Board both signing, shall be sufficient evidence of such approval in all courts of justice and elsewhere.

(3.) Where a byelaw has been so approved, any fine imposed by the same may be recovered before a court of summary jurisdiction; and one-half of any fine so recovered shall be paid to the informer and the other half to the authority who made the byelaw, and shall be applied by them in aid of the expenses of the lodging-houses.

## PART VII.

### REPEAL AND TEMPORARY PROVISIONS.

**102.** The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent in the third column of that schedule specified.

Provided that—

- (1.) Where the Labouring Classes Lodging Houses Acts, 1851 to 1885, have been adopted in any district, that adoption shall be deemed to be an adoption of Part III. of this Act, and this Act shall apply accordingly :
- (2.) Any officer appointed under any enactment hereby repealed shall continue and be deemed to be appointed under this Act :
- (3.) Any dwelling-houses acquired by the local authority under the Artizans Dwellings Acts, 1868 to 1885, and vested in them at the commencement of this Act, shall be held by such local authority as if they had been acquired under the provisions of Part III. of this Act, and any land or premises other than dwelling-houses so acquired and held by them at the commencement of this Act shall be held as if the same had been acquired as a site of an obstructive building in pursuance of Part II. of this Act, but may with the consent of the authority authorised by the said part of this Act to consent to the sale of land so acquired be appropriated for the purposes of Part III. of this Act.

**103.** The provisions of this Act relating to compensation, to the power of the local authority to enter and value premises, to the compensation of tenants for expense of removal, shall be applicable in the case of all improvement schemes which have been confirmed by Act of Parliament during the session in which this Act is passed.

## SCHEDULES.

## FIRST SCHEDULE.

## ENGLAND AND WALES.

*Throughout Act.*

District.	Local Authority.	Local Rate.
Urban sanitary districts.	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health Acts are defrayed.
The City of London.	The Commissioners of Sewers.	The sewer rate and the consolidated rate levied by such Commissioners, or either of such rates.

*(1.) For the purpose of Parts I. and III.*

The County of London.	The County Council of London.	The county fund and the amount payable shall be deemed to be required for special county purposes.
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*(2.) For the purposes of Part II.*

A parish other than the parish of Woolwich mentioned in Schedule A. to the Metropolis Management Act, 1855, as amended by the Metropolis Management (Amendment) Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887.	The Vestry elected under the Metropolis Management Act, 1855.	The general rate leviable by such vestry or board under the Metropolis Management Act, 1855.
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Modified by 62 & 63 Vict. c. 14, s. 4. Borough Councils taking the places of the Vestries, District Boards, and the Board of Health for Woolwich. The Borough Councils have now power to carry out Part III., 62 & 63 Vict. c. 14, s. 5 (2).

ENGLAND AND WALES—*continued.*

District	Local Authority	Public Health
A district mentioned in Schedule B. to the Metropolis Management Act, 1855, as amended by the Metropolis Management (Amendment) Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1877.	The Board of Works for the district created under the Metropolis Management Act, 1855.	The vestry or, if applicable, such vestry or board under the Metropolis Management Act, 1855.
Parish of Woolwich	The local board of health.	The district local authority, general district rate.

(3.) *For the purposes of Parts II, and III.*

Rural sanitary district	The rural sanitary authority.	The rate out of which the "general" or "special" expenses, as the case may be, of the execution of the Public Health Acts are defrayed.
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## SCOTLAND.

*Throughout Act.*

Districts under the Public Health (Scotland) Act, 1867, <sup>1</sup> exclusive of parishes or parts thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The local authorities under the Public Health (Scotland) Act, 1867, in those districts.	The public health rate.
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<sup>1</sup> Now rural district council (56 & 57 Vict. c. 73), s. 21. In Ireland 61 & 62 Vict. c. 37, ss. 22 and 23.

<sup>2</sup> The Public Health (Scotland), Act is repealed by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38).

SCOTLAND—*continued.**Under Parts II. and III.*

District.	Local Authority.	Local Rate.
Districts under the Public Health (Scotland) Act, 1867, as amended by the Local Government (Scotland) Act, 1889.	Local authorities under the Public Health (Scotland) Act, 1867, in those districts.	The public health rate.

## IRELAND.

*Under Parts I. and III.*

Urban sanitary district.	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in these districts.
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*Under Part II.*

Urban sanitary district.	The urban sanitary authority.	The rate out of which the general expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in the district.
Rural sanitary district.	The rural sanitary authority.	The rate out of which the special expenses of the execution of the Public Health (Ireland) Act, 1878, are defrayed in the district.

*Note.*

In any case in the United Kingdom where an urban sanitary authority does not levy a borough rate or any general district rate, but is empowered by a Local Act or Acts to borrow money and to levy a rate or rates throughout the



whole of their district for purposes similar to those, or to some of those for which a general district rate is leviable, it shall be lawful for such sanitary authority to defray the expenses incurred in the execution of Part III. of this Act by means of money to be borrowed, and a rate or rates to be levied, under such Local Act or Acts.

## SECOND SCHEDULE.

### PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACTS.

#### *Deposit of Maps and Plans.*

(1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily, (which lands are herein-after referred to as the scheduled lands,) together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority, and shall deposit and keep copies of such maps and schedules at the office of the local authority.

#### *Appointment of Arbitrator.*

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming

authority, upon the application of the local authority, to appoint an arbitrator between the local authority, and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

*Proceedings on Arbitration.*

(5.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration: that is to say,

"I, *A.B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Housing of the Working Classes Act 1890.

"*A.B.*

Made and subscribed in the presence of \_\_\_\_\_."

And a copy of the declaration shall be annexed to the award when made: and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanour.

(6.) As soon as an arbitrator has been appointed as aforesaid, the certifying authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(1.) The appointment of the arbitrator; and

(2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

Such publication shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places or on near the lands to be taken, and also by leaving a

notice thereof at each house proposed to be taken and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessors or reputed lessees, so far as they can be ascertained as aforesaid.

(7.) In every case in which compensation is payable under Part I. of this Act, by the local authority to any claimant and which compensation has not been settled by the subject of an agreement (in this Act referred to as a disputed case) the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation claimed by the claimant, and the amount which the local authority may be willing to pay; and after hearing all persons interested in each disputed case as may appear before him at a time and place of which notice has been given as in Part I. of this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

(8.) The arbitrator shall give notice to the claimants in disputed cases by causing such notice to be read, shown or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(9.) After the arbitrator has arrived at a decision on all the disputed cases brought before him, he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form, but the arbitrator may and, if the local authority request him so to do shall from time to time make an award respecting a portion only of the disputed cases brought before him.

(10.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the

office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years previous to the claim when the abstract shall commence with such conveyance.

#### *Scope of Powers of Arbitration.*

(11.) The arbitrator shall have the same power of apportioning any rent-service rent-charge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845.

(12.) Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory.

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided with respect to appeals to a jury in respect of

compensation for land by his schedule, saving the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

(13.) The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest, or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge, arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

#### *Payment of Purchase Money.*

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interests claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award.

(15.) Every such certificate shall be prepared by and at the cost of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person

is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases herein-after mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in the High Court, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases: and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases herein-after mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as herein-after mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall give to the

local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an ad valorem stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the cost of the local authority.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of Part I. of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the

last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said Bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement herein-before mentioned, if they think fit, so as the same be obtained at the cost of the local authority.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the cost and charge of the local authority, be enforced by any party or parties, by application to the High Court, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

*Entry on Lands on making Deposit.*

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions herein-before contained, it shall be lawful for the local authority, at any time after the arbitrator has framed his award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority: and the arbitrator shall, upon the request of the local authority at any time after he has framed such award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in



such award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under Part I. of this Act, shall be had, and payments made, as if such entry and deposit had not been made:

Provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of Part I. of this Act, such compensation is required to be paid into the Bank of England, then until the same, with such interest, is paid into such Bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the High Court, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in Bank Annuities or Government securities, and accumulated: and upon such payment as

aforesaid by the local authority it shall be lawful for the High Court, upon a like application to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

*Appeal.*

(26.) In the following cases, namely,—

- (a) Where the party named in any certificate issued under the provisions herein-before contained of the amount of the compensation ascertained by any award under Part I. of this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds one thousand pounds, and
- (b) Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds one thousand pounds; also
- (c) Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of Part I. of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of one thousand pounds:

the party dissatisfied may, upon obtaining the leave of the High Court, which leave may be granted by such court or any judge thereof at chambers in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper

amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen —

- (1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate ;
- (2.) Where moneys have been paid into court, at the date of the payment into court ;
- (3.) Where the local authority appeals, at the date of the making of the award.

(27.) Where a notice has been given under Part I. of this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one :

Provided also, that

- (1.) Where the local authority appeals that authority shall be deemed to be the plaintiff and the party entitled to compensation to be the defendant ; and
- (2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the High Court ; but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.

(3.) Where the local authority is the appellant, —

- (a) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the

arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct; and

(b) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

(c) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

#### *Costs of Arbitration.*

(28.) The salary or remuneration, travelling, and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of Part I. of this Act into execution, shall, after the amount thereof shall have been certified under this article, be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly.

Further, any such certificate may be made a rule of a superior court on the application of any party named therein, and may be enforced accordingly.

(29.)—(1.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority ;

Provided that—

(a) The arbitrator shall not be required to certify the amount of costs in any case where he considers such costs are not properly payable by the local authority ;

(b) The arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration, in any case where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.

(c) No certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of the claim before the appointment of the arbitrator.

(2.) If within seven days after demand the amount certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

#### *Miscellaneous.*

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority.

or of any party making any claim under the provisions of Part I. of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under Part I. of this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of Part I. of this Act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed: and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the London Gazette.

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by Part I. of this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

#### *Application of Schedule to Scotland.*

The provisions of this schedule shall apply to Scotland, with the following modifications :—

(33.)—(a.) In any reference in this schedule to “an abstract of title” there shall be substituted “a legal progress of the title deeds”:

(b.) In articles sixteen and eighteen of this schedule the words heirs, executors, or assignees shall be substituted for the words "executors, administrators, or assigns":

(c.) In articles twenty and twenty-one the words "as amended by the Court of Chancery Funds Act, 1872," shall be omitted:

(d.) Any reference to payment of money into the Bank of England shall be construed to be payment into any one of the incorporated or chartered banks of Scotland:

(e.) Any reference to the High Court shall be construed as a reference to the Court of Session:

(f.) Any money ordered to be invested under article twenty-five of this schedule shall be invested only in Government securities:

(g.) Any reference to payment of money into Court shall be construed as payment into bank:

(h.) A reference to plaintiff and defendant shall be construed as a reference to pursuer and defender:

(i.) The Edinburgh Gazette shall be substituted for the London Gazette.

(34.) In lieu of articles 11, 17, and 19 of this schedule the following provisions shall be substituted:—

(i.) The arbitrator shall have the same power of apportioning any feu duty, ground annual, casualty or superiority, or any rent or other annual or recurring payment or incumbrance, or any rent payable in respect of lands comprised in a lease, as the sheriff has under the Lands Clauses Consolidation (Scotland) Act, 1845.

(ii.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to record the same in the books of council and session, or other judge's books competent, and to have a decree interponed thereto, and to be extracted with a view to execution, in the like manner as if a formal clause of registration had been contained therein; and all diligence and

execution shall be competent thereon in the like manner and to all effects as upon any bond containing such formal clause of registration ; and all moneys payable under such certificates, or to be recovered by such execution and diligence as aforesaid, shall be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

- (iii.) In every case in which any moneys are paid by any local authority under this Act for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a conveyance of the lands in respect of which such moneys are paid, or of all the estate and interest of such party, and of all parties claiming under or through him, in such lands, and every such conveyance shall be prepared by and at the costs of the local authority.

*Application of Schedule to Ireland.*

(35.) The provisions of this schedule shall apply to Ireland, with the following modifications :—

- (a) In articles twenty and twenty-one the words and figures  
 “ the Act of the session of the thirteenth and four-  
 “ tenth years of the reign of Her present Majesty,  
 “ chapter fifty-one, intituled ‘ An Act for the transfer  
 “ of the equitable jurisdiction of the Court of  
 “ Exchequer to the Court of Chancery in Ireland,  
 “ and any subsequent enactment ’ ” shall be substituted for the words and figures “ the Court of Chancery Funds Act, 1872.”
- (b) The Bank of Ireland shall be substituted for the Bank of England ;
- (c) The Dublin Gazette shall be substituted for the London Gazette.



## THIRD SCHEDULE

ENACTMENTS APPLIED for the purpose of PROCEEDINGS  
for CLOSING PREMISES in ENGLAND, SCOTLAND and  
IRELAND respectively.

## ENGLAND.

*Administrative County of London.*

SANITARY ACT, 1866 (Section 21).

NUISANCES REMOVAL ACT, 1855 (Sections 8, 12, and 13).

SANITARY ACT, 1866 (Section 21).

s. 21. The nuisance authority " " shall,  
previous to taking proceedings before a justice under the twelfth  
section of the Nuisances Removal Act, 1855, serve a notice  
" " " " on the owner or occupier of the  
premises on which the nuisance arises, to abate the same, and  
for that purpose to execute such works, and to do all such  
things as may be necessary within a time to be specified in  
the notice: Provided,

First, that where the nuisance arises from the want of  
defective construction of any structural convenience, or  
where there is no occupier of the premises, notice under  
this section shall be served on the owner;

" " " " " "

NUISANCES REMOVAL ACT, 1855 (Sections 8, 12, and 13).

s. 8. The word nuisances under this Act shall include—

Any premises in such a state as to be a nuisance or  
injurious to health " " "

" " "

s. 12. In any case where a nuisance is so ascertained by  
the local authority to exist, or where the nuisance in their  
opinion did exist at the time when the notice was given, and

although the same may have been since removed or discontinued, is, in their opinion, likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring \* \* \* the owner or occupier of the premises on which the nuisance arises, to appear before any two justices in petty sessions assembled, at their usual place of meeting, who shall proceed to enquire into the said complaint ;

s. 13. \* \* \* and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose, they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

*Elsewhere than London.*

PUBLIC HEALTH ACT, 1875 (Sections 91, 94, 95, and 97).

s. 91. For the purposes of this Act—

(1) Any premises in such a state as to be a nuisance or injurious to health \* \* \* shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

s. 94. \* \* \* the local authority shall \* \* \* serve a notice \* \* \* on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose : **Provided—**

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner.

s. 95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

s. 97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on the court being satisfied that it has been rendered fit for that purpose, the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

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## SCOTLAND.

### PUBLIC HEALTH (SCOTLAND) ACT, 1867<sup>1</sup> (Sections 16, 18, and 19).

s. 16. The word "nuisance" under this Act shall include—

- (a) Any insufficiency of size, defect of structure, defect of ventilation, want of repair or proper drainage

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<sup>1</sup> *Supra*, p. 142.

or suitable watercloset, or privy accommodation or cesspool, and any other matter or circumstance rendering any inhabited house, building, premises, or part thereof, injurious to the health of the inmates or unfit for human habitation or use—

\* \* \*

s. 18. In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority,

and,

although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner herein-after directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued since the demand of admission was made or the certificate was given, that it is likely to recur or to be repeated, he shall decree for the removal or remedy or discontinuance or interdict of the nuisance.

\* \* \*

s. 19. \* \* \* and if the nuisance proved to exist be such as to render a house or building unfit for human habitation, he<sup>1</sup> may prohibit the using thereof for that purpose until it is rendered fit for that purpose, or do otherwise as the case may in his judgment require.

## IRELAND.

### PUBLIC HEALTH (IRELAND) ACT, 1878

(Sections 107, 110, 111, and 113).

s. 107. For the purposes of this Act—

- (1.) Any premises in such a state as to be a nuisance or injurious to health \* \* \* shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act.

\* \* \* the sheriff, magistrate, or justice.

s. 110. \* \* \* the sanitary authority shall  
 \* \* \* serve a notice \* \* \* on  
 the owner or occupier of the premises on which the nuisance  
 arises, requiring him to abate the same within a time to be  
 specified in the notice, and to execute such works and do  
 such things as may be necessary for that purpose: Provided

First, That where the nuisance arises from the want or  
 defective construction of any structural convenience,  
 or where there is no occupier of the premises, notice  
 under this section shall be served on the owner:

s. 111. If the person on whom a notice to abate a nuisance  
 has been served makes default in complying with any of  
 the requisitions thereof within the time specified, or if the  
 nuisance, although abated since the service of the notice,  
 is, in the opinion of the sanitary authority, likely to recur  
 on the same premises, the sanitary authority shall cause a  
 complaint relating to such nuisance to be made before a  
 justice, and such justice shall thereupon issue a summons  
 requiring the person on whom the notice was served to  
 appear before a court of summary jurisdiction.

s. 113. Where the nuisance proved to exist is such as to  
 render a house or building, in the judgment of the court,  
 unfit for human habitation, the court may prohibit the using  
 thereof for that purpose until, in its judgment, the house or  
 building is rendered fit for that purpose: and on the court  
 being satisfied that it has been rendered fit for that purpose  
 the court may determine its previous order by another,  
 declaring the house or building habitable and from the date  
 thereof such house or building may be let or inhabited.

## FOURTH SCHEDULE.

FORMS.<sup>1</sup>

## FORM A

*Form of Notice requiring Premises to be made fit for Habitation.*

To [person causing the premises to be unfit for habitation, or owner or occupier of the premises, as the case may be].

Take notice that under the provisions of the Public Health Act, 1875, and the Housing of the Working Classes Act, 1890, the [describe the local authority], being satisfied that the following premises, that is to say [describe premises or place where the nuisance exists], are in a state so dangerous or injurious to health as to be unfit for human habitation, do hereby require you within \_\_\_\_\_ from the service of this notice to make the said premises fit for human habitation.

If you make default in complying with the requisitions of this notice proceedings will be taken before a court of summary jurisdiction for prohibiting the use of the premises for human habitation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

*Signature of officer }  
of local authority }*

<sup>1</sup> See 53 & 60 Viet. c. 11, s. 2, *infra*, as to forms in Ireland.

## FORM B.

*Form of Summons for Closing Order.*

To the owner or occupier of [*describe premises*] situate at  
 [*insert such a description as may be sufficient to identify  
 the premises*].

County of [or borough  
 of , or district  
 of , or as the  
 case may be] to wit, } You are required to appear before  
 } *describe the court of summary juris-*  
 } *diction* at the petty sessions or court  
 } holden at on the  
 day of next, at the hour of  
 in the noon, to answer the complaint this  
 day made to me by that the premises above  
 mentioned are used as a dwelling-house and are in a state so  
 dangerous or injurious to health as to be unfit for human  
 habitation.

Given under my hand and seal this day of  
 18 .

## FORM C.

*Form of Closing Order.*

To the owner or occupier of [*describe the premises*] situated  
 [*give such description as may be sufficient to identify the  
 premises*].

County of [or borough, &c. of  
 district of  
 or as the case may be]. } WHEREAS on the day of  
 } complaint was made  
 } before Esquire  
 } one of Her Majesty's justices of the  
 } peace acting in and for the county  
 } [*or other jurisdiction*] stated in the margin, [*or as the case  
 may be,*] by that certain premises situated  
 at in the district under the Public Health Act,  
 1875, of [*describe the local authority*], were in a state so  
 dangerous or injurious to health as to be unfit for human  
 habitation :

And whereas \_\_\_\_\_ the owner [or occupier] within the meaning of said Public Health Act, 1875, hath this day appeared before us (or me) *describing the court*, to answer the matter of the said complaint [or in case the party charged do not appear, &c.], and whereas it hath been this day proved to our (or my) satisfaction that a true copy of a summons requiring the owner [or occupier] of the said premises [or the said A.B.] to appear this day before us [or me] \_\_\_\_\_ hath been duly served according to the said Act and the Housing of the Working Classes Act, 1890:

Now on proof here laid before us [or me] that the said premises are in a state so dangerous or injurious to health as to be unfit for human habitation, we [or I], in pursuance of the said Acts, do prohibit the using of the premises for the purpose of human habitation until in our [or my] judgment they are restored fit for that purpose.

Given under the hands and seals of us [or the hand and seal of me, *describing the court*],

This \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_  
*J.S.* (L.S.)  
*J.P.* (L.S.)

## FIFTH SCHEDULE.

### FORM MARKED A.

*The Housing of the Working Classes Act, 1890.*

County of \_\_\_\_\_

Parish of \_\_\_\_\_

No. \_\_\_\_\_

### *Charging Order.*

The \_\_\_\_\_ being the local authority under the above-mentioned Act, do, by this Order under their hands and seal, charge the inheritance or fee



of the premises mentioned in the schedule hereunto with the payment to \_\_\_\_\_ of the sum of \_\_\_\_\_ pounds payable yearly on the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years, and being in consideration of an expenditure of \_\_\_\_\_ pounds incurred by him in respect of the said premises.

#### FORM MARKED B.

##### *Form of Assignment of Charge. To be endorsed on Charging Order.*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
I, the within-named \_\_\_\_\_  
pursuance of the Housing of the Working Classes Act, 1890,  
and in consideration of \_\_\_\_\_ pounds this day paid to  
me, hereby assign to \_\_\_\_\_ the within-mentioned  
charge.

(Signed)

#### SIXTH SCHEDULE.

BYELAWS TO BE MADE IN ALL CASES (EXCEPT WHERE A LODGING HOUSE IS USED AS A SEPARATE DWELLING).

For securing that the lodging-houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the local authority.

For securing the due separation at night of men and boys above eight years old from women and girls.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances.

For determining the duties of the officers, servants, and others appointed by the local authority.

## SEVENTH SCHEDULE.

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
14 & 15 Vict. c. 13.	The Labouring Classes Lodging-Houses Act, 1851.	The whole Act.
18 & 19 Vict. c. 85.	The Dwelling-Houses (Scotland) Act, 1855.	The whole Act.
20 & 21 Vict. c. 28.	The Labouring Classes Dwelling-Houses Act, 1860.	The whole Act.
22 & 23 Vict. c. 14.	The Labouring Classes Lodging-Houses and Dwellings Act (Ireland) 1860.	The whole Act.
24 & 25 Vict. c. 28.	The Labouring Classes Dwelling-Houses Act, 1861.	The whole Act.
25 & 26 Vict. c. 19.	The Artizans and Labourers Dwellings Act, 1862.	The whole Act.
26 & 27 Vict. c. 12.	The Artizans and Labourers Dwellings Improvement Act, 1863.	The whole Act.
28 & 29 Vict. c. 12.	The Artizans and Labourers Dwellings Improvement (Scotland) Act, 1865.	The whole Act.
31 & 32 Vict. c. 62.	The Artizans and Labourers Dwellings Improvement Act, 1868.	The whole Act.
33 & 34 Vict. c. 62.	The Artizans and Labourers Dwellings Act (1868) Amendment Act, 1870.	The whole Act.
35 & 36 Vict. c. 17.	The Public Works Loans Act, 1872.	Section six.
37 Vict. c. 12.	The Artizans and Labourers Dwellings Improvement (Scotland) Act, 1873.	The whole Act.
40 & 41 Vict. c. 28.	An Act to extend and amend the twenty-second section of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1873.	The whole Act.

Session and Chapter.	Short Title	Extent of Repeal.
45 & 46 Vict. c. 54.	The Artizans Dwelling Act, 1882.	The whole Act.
48 & 49 Vict. c. 72.	The Housing of the Working Classes Act, 1885.	By Schedule A, except sections three and seven to ten, and except section ten in far as it relates to bylaws, authorities, &c. &c. &c.

## HOUSING OF THE WORKING CLASSES ACT, 1893.

[56 & 57 VICT. CH. 33.]

An Act to remove certain doubts as to the application of Part III. of the Housing of the Working Classes Act, 1890, to certain authorities in Ireland.

[24th August 1893.]

**BE** it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1.) It is hereby declared that sections two hundred and thirty-seven to two hundred and forty-three, and section two hundred and forty-six of the Public Health (Ireland) Act, 1878, and section eighty-three of the principal Act, apply and have always applied to the borrowing by any local authority in Ireland for the purpose of the execution of Part III. of the principal Act, in like manner as if that purpose were

specified in those sections, and the local rate were the fund or rate there specified, and the local authority were a sanitary authority, and that the Commissioners of Public Works in Ireland have, and have always had, power to lend accordingly.

(2.) All expenses incurred by town commissioners in the execution of Part III. of the principal Act shall be defrayed out of the local rate, and the town of any town commissioners shall be a district within the meaning of Parts III. and VI. of the principal Act, and section eighty-four of the principal Act shall apply as if the town commissioners were a sanitary authority.

2. This Act shall be construed as one with the Housing of the Working Classes Act, 1890 (in this Act referred to as the principal Act), and that Act and this Act may be cited together as the Housing of the Working Classes Acts, 1890, and 1893, and this Act may be cited separately as the Housing of the Working Classes Act, 1893.

## HOUSING OF THE WORKING CLASSES ACT, 1891.

[57 & 58 Vict. Ch. 55.]

An Act to explain the provisions of Part II. of the Housing of the Working Classes Act, 1890, with respect to powers of borrowing.

[25th August 1891.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. For any purpose for which a local authority are, by a scheme for reconstruction duly sanctioned under Part II. of the Housing of the Working Classes Act, 1890, or by the order sanctioning the scheme, authorised to borrow, the authority shall have power and shall be deemed always to have had power to borrow in like manner and subject to the like conditions as they may borrow under section forty-three of that Act for the purpose of raising the sums required for the purchase money or compensation therein mentioned, and sections forty-three and forty-six of that Act shall apply accordingly.

2. This Act may be cited as the Housing of the Working Classes Act, 1894.

## HOUSING OF THE WORKING CLASSES (IRELAND) ACT, 1896.

[59 & 60 Vict. Ch. 11.]

An Act to remove certain Doubts with respect to the Housing of the Working Classes Act, 1890, so far as it applies to Ireland. [2nd July 1896.]

**BE** it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1.) It is hereby declared that where the town commissioners of any town in Ireland, not being an

urban sanitary district, have adopted Part Three of the Housing of the Working Classes Act, 1890, they shall have the same powers under Part Three of that Act of acquiring land and otherwise as any other local authority, and the said Part Three and the sections of the Public Health (Ireland) Act, 1878, applied for the purpose of that Part, shall apply accordingly as if such town commissioners were a sanitary authority; and if such town commissioners are not already a body corporate, they shall, for the purpose of holding such land, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

(2.) Any instrument relating to such land shall be duly executed by such town commissioners if executed in manner provided by section fifty-nine of the Commissioners Clauses Act, 1847, with respect to conveyances by commissioners who are not a body corporate.

2. It is hereby declared that the forms in the Fourth Schedule to the Housing of the Working Classes Act, 1890, may be altered in Ireland so as to be in conformity with the forms ordinarily used in Ireland under the Petty Sessions (Ireland) Act, 1851, and need not be under seal.

3. This Act may be cited as the Housing of the Working Classes (Ireland) Act, 1896, and shall be construed as one with the Housing of the Working Classes Acts, 1890, 1893, and 1894, and these Acts and Act may be cited collectively as the Housing of the Working Classes (Ireland) Acts, 1890 to 1896.

HOUSING OF THE WORKING CLASSES ACT,  
1890, AMENDMENT (SCOTLAND) ACT, 1896.

59 & 60 Vict. Ch. 31.

An Act to amend the Housing of the Working Classes  
Act, 1890. 7th August 1896.

**B**E it enacted by the Queen's most Excellent Majesty,  
by and with the advice and consent of the Lords  
Spiritual and Temporal, and Commons, in this present  
Parliament assembled, and by the authority of the same,  
as follows :

1. This Act may be cited as the Housing of the  
Working Classes Act, 1890, Amendment (Scotland) Act,  
1896.

2. Any land acquired by a local authority for the  
purposes of the Artizans and Labourers Dwellings Im-  
provement (Scotland) Acts, 1875 to 1880, and still held  
by and vested in them shall be deemed to be held by and  
vested in them for the purposes of Part I. and relative  
provisions of the Housing of the Working Classes Act,  
1890, without the necessity of expelling or recording any  
notarial or other instrument.

3. Section ninety-six, subsection two, of the Housing  
of the Working Classes Act, 1890, shall be read and con-  
strued as if the words "and any Acts amending the  
same," had been inserted after "1871" and as if the  
words "in the case of a rural sanitary authority" had  
been inserted after the words "provided that" occurring  
in that subsection.

4. The Housing of the Working Classes Act, 1890,  
Amendment (Scotland) Act, 1892, is hereby repealed.

# HOUSING OF THE WORKING CLASSES ACT, 1900.

(63 & 64 Vict. Ch. 59.)

An Act to amend Part III. of the Housing of the Working Classes Act, 1890. [8th August 1900.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where any council, other than a rural district council, have adopted Part Three of the Housing of the Working Classes Act, 1890 (in this Act referred to as "the principal Act"), they may, for supplying the needs of their district, establish or acquire lodging houses for the working classes under that Part outside their district.

2.—(1.) The council of any rural district may, with the consent of the county council, adopt Part Three of the principal Act, either for the whole of their district or for any contributory place or places therein.

(2.) In giving or withholding their consent under this section, the county council shall have regard—

- (a) to the area for which it is proposed to adopt the said Part; and
- (b) to the necessity for accommodation for the housing of the working classes in that area; and
- (c) to the probability of such accommodation being provided without the adoption of the said Part; and
- (d) to the liability which will be incurred by the rates, and to the question whether it is, under all the circumstances, prudent for the district council to adopt the said Part.



(3) The principal Act is hereby repealed to the extent mentioned in the third column of the schedule to this Act.

3.—(1.) Any expenses incurred by the council of a metropolitan borough under Part III. of the principal Act, whether within or without the borough, shall be defrayed as part of the ordinary expenses of the council, and in that Act the expressions "district," "local authority," and "local rate" shall, for the purposes of Part III. of the Act, include a metropolitan borough, the council of the borough, and the general rate of the borough.

(2.) Where the council of a metropolitan borough adopt Part III. of the principal Act, the power of the council to borrow for the purposes of that Part shall be exercisable in the like manner and subject to the like conditions as the power of the council to borrow for the purposes of Part II. of that Act.

4. Where land acquired by a council under Part III. of the principal Act is appropriated for the purpose of re-housing persons displaced by the council under the powers of any other Part of that Act or of any other enactment, the receipts and expenditure in respect of that land (including all costs in respect of the acquisition and laying out of the land), and of any buildings erected thereon, may be treated as receipts and expenditure under that Part or enactment, but shall be accounted for under a separate head.

5.—(1.) The local authority, if not a rural district council with the consent of the Local Government Board, and if a rural district council with the consent of the ~~county council~~, may lease any land acquired by them under and for the purposes of Part III. of the principal Act to any lessee for the purpose and under

the condition that the lessee will carry the Act into execution by building and maintaining on the land lodging houses within the meaning of the Act : and the local authority shall insert in every lease all necessary provisions for insuring the user of the land and buildings for lodging houses within the meaning of the Act, and in particular the local authority shall insert in any lease provisions binding the lessee to build on the land as in the lease prescribed, and to maintain and repair the buildings, and securing the use of the buildings exclusively as lodging houses within the meaning of the Act, and prohibiting any addition to or alteration of the character of the buildings without the consent of the local authority : and also a provision for the re-entry of the local authority on the land on the breach of any of the terms of the lease : and every deed or instrument of demise of the land or buildings shall be endorsed with notice of this subsection.

Provided that in the case of a council in London, the consent of a Secretary of State shall be substituted for the consent of the Local Government Board.

(2.) Sections sixty-one and sixty-two of the principal Act shall not extend to any lodging house to which this section applies.

6. The council of any administrative county, if a parish council, shall resolve that a rural district council ought to have taken steps for the adoption of Part III. of the principal Act, or to have exercised their powers under that Part, and have failed to do so, may, if satisfied after due inquiry that the district council have so failed, resolve that the powers of the district council for the purposes of that Part shall be transferred to the county council with respect to the parish, and they shall be transferred accordingly, and the resolution shall, if necessary, have effect as an adoption of that Part by the

district council, and, subject to the provisions of Act, section sixty-three of the Local Government Act, 1894, shall apply as if the powers had been transferred under that Act.

7. Where land is acquired under Part III. of the principal Act otherwise than by agreement, any question as to the amount of compensation which may arise shall in default of agreement be determined by a single arbitrator to be appointed and removable by the Local Government Board, and subsections (5), (7), (8), (10), and (11) of section forty-one of the Act shall apply as in the case of an arbitration under that section. Provided that in the case of a council in London a Secretary of State shall be substituted for the Local Government Board.

8.—(1.) This Act may be cited as the Housing of the Working Classes Act, 1900, and the Housing of the Working Classes Acts, 1890 to 1894, and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1900.

(2.) This Act shall not extend to Scotland or Ireland.

## SCHEDULE.

### REPEAL.

Session and Chapter.	Short Title.	Extent of Repeal.
53 & 54 Vict. c. 70.	The Housing of the Working Classes Act, 1890.	The proviso to section fifty-four, Section fifty-five. In section sixty-five, the words from "and save where" to "bear such expenses," and the words "at the time of the publication of the certificate" and "who publish the same."

# HOUSING OF THE WORKING CLASSES ACT, 1903.

[3 Edw. 7. Ch. 39.]

An Act to amend the Law relating to the Housing  
of the Working Classes. [14th August 1903.]

**B**E it enacted by the King's most Excellent Majesty,  
by and with the advice and consent of the Lords  
Spiritual and Temporal, and Commons, in this present  
Parliament assembled, and by the authority of the same,  
as follows :

## *General Amendments of Law.*

1. (1.) The maximum period which may be sanctioned  
as the period for which money may be borrowed by a  
local authority for the purposes of the Housing of the  
Working Classes Act, 1890 (in this Act referred to as  
"the principal Act"), or any Acts amending it, shall be  
eighty years, and as respects money so borrowed eighty  
years shall be substituted for sixty years in section two  
hundred and thirty-four of the Public Health Act, 1875.

(2.) Money borrowed under the principal Act or any  
Acts (including this Act) amending it (in this Act  
collectively referred to as the Housing Acts) shall not  
be reckoned as part of the debt of the local authority  
for the purposes of the limitation on borrowing under  
subsections two and three of section two hundred and  
thirty four of the Public Health Act, 1875.

2.—(1.) His Majesty may by Order in Council assign  
to the Local Government Board any powers and duties  
of the Secretary of State under the Housing Acts, or  
under any scheme made in pursuance of those Acts, and  
the powers of the Secretary of State under any local  
Act, so far as they relate to the housing of the working

classes, and any such powers and duties so assigned shall become powers and duties of the Local Government Board.

(2.) Section eleven of the Board of Agriculture Act, 1889, shall apply with respect to the powers and duties transferred under this section as it applies with respect to the powers and duties transferred under that Act, with the substitution of the Local Government Board for the Board of Agriculture and of the date of the transfer under this section for the date of the establishment of the Board of Agriculture.

3. Where under the powers given after the date of the passing of the Act by any local Act or Provisional Order, or Order having the effect of an Act, any land is acquired, whether compulsorily or by agreement, by any authority, company, or person, or where after the date of the passing of this Act any land is so acquired compulsorily under any general Act (other than the Housing Acts), the provisions set out in the Schedule to this Act shall apply with respect to the provision of dwelling accommodation for persons of the working class.

*Amendments as to Schemes.*

4.—(1.) If, on the report made to the confirming authority on an inquiry directed by them under section ten of the principal Act, that authority are satisfied that a scheme ought to have been made for the improvement of the area to which the inquiry relates, or of some part thereof, they may, if they think fit, order the local authority to make such a scheme, either under Part I. of the principal Act, or, if the confirming authority so direct, under Part II. of that Act, and to do all things necessary under the Housing Acts for carrying into execution the scheme so made, and the local authority shall accordingly make a scheme or direct a scheme to be

prepared as if they had passed the resolution required under section four or section thirty-nine of the principal Act, as the case may be, and do all things necessary under the Housing Acts for carrying the scheme into effect.

Any such order of the confirming authority may be enforced by Mandamus.

(2) Any twelve or more ratepayers of the district shall have the like appeal under section sixteen of the principal Act as is given to the twelve or more ratepayers who have made the complaint to the medical officer of health mentioned in that section.

5. (1.) Section seven of the principal Act shall have effect as if the words "in the month of September or October or November" were omitted from paragraph (a), and as if the words "during the thirty days next following the date of the last publication of the advertisement" were substituted for the words "during the month next following the month in which such advertisement is published" in paragraph (b).

(2.) The order of a confirming authority under subsection four of section eight of the principal Act shall, notwithstanding anything in that section, take effect without confirmation by Parliament—

(a) if land is not proposed to be taken compulsorily :  
or

(b) if, although land is proposed to be taken compulsorily, the confirming authority before making the order are satisfied that notice of the draft order has been served as required as respects a Provisional Order by subsection five of the said section eight, and also that the draft order has been published in the London Gazette, and that a petition against the draft order has not been presented to the confirming authority by any owner of land proposed to be

taken compulsorily within two months after the date of the publication and the service of notice, or, having been so presented, has been withdrawn.

(3.) For the purposes of the principal Act, the making of an order by a confirming authority, which takes effect under this section without confirmation by Parliament, shall have the same effect as the confirmation of the order by Act of Parliament, and any reference to a Provisional Order, made under section eight of the principal Act, shall include a reference to an order which so takes effect without confirmation by Parliament.

6.—(1.) If an order under subsection four of section eight or under section thirty-nine of the principal Act, which, if no petition were presented, would take effect without confirmation by Parliament, is petitioned against, the confirming authority or the Local Government Board, as the case may be, may, if they think fit, on the application of the local authority, make any modifications in the scheme to which the order relates for the purpose of meeting the objections of the petitioner and withdraw the order sanctioning the original scheme, substituting for it an order sanctioning the modified scheme.

(2.) The same procedure shall be followed as to the publication and giving notices, and the same provisions shall apply as to the presentation of petitions and the effect of the order, in the case of the order sanctioning the modified scheme, as in the case of the order sanctioning the original scheme, but no petition shall be received or have any effect except one which was presented against the original order, or one which is concerned solely with the modifications made in the scheme as sanctioned by the new order.

7. Where a scheme for reconstruction under Part II. of the principal Act is made, neighbouring lands may be included in the area comprised in the scheme if the local authority under whose direction the scheme is made are of opinion that that inclusion is necessary for making their scheme efficient, but the provision of subsection two of section forty-one, as to the exclusion of any additional allowance in respect of compulsory purchase, shall not apply in the case of any land so included.

*Amendments as to Closing Orders, Demolition &c.*

8.—(1.) If in the opinion of the local authority any dwelling-house is not reasonably capable of being made fit for human habitation, or is in such a state that the occupation thereof should be immediately discontinued, it shall not be necessary for them before obtaining a closing order, to serve a notice on the owner or occupier of the premises to abate the nuisance, and a justice may issue a summons for a closing order and a closing order may be granted, although such a notice has not been served.

(2.) The Local Government Board may by order prescribe forms in substitution for those in the Fourth Schedule to the principal Act, and section thirty-two of the principal Act shall have effect as if the forms so prescribed were referred to therein in lieu of the forms in that Schedule.

9. Where the amount realised by the sale of materials under section thirty-four of the principal Act is not sufficient to cover the expenses incident to the taking down and removal of a building, the local authority may recover the deficiency from the owner of the building as a civil debt in manner provided by the Summary Jurisdiction Acts, or under the provisions of the Public Health Acts relating to private improvement expenses.



**10.** Where default is made as respects any dwelling-house in obeying a closing order in the manner provided by subsection three of section thirty two of the principal Act, possession of the house may be obtained (without prejudice to the enforcement of any penalty under that provision), whatever may be the value or rent of the house, by or on behalf of the owner or local authority, either under sections one hundred and thirty-eight to one hundred and forty five of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be obtained as if the owner or local authority were the landlord.

Any expenses incurred by a local authority under this section may be recovered from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

#### *Miscellaneous*

**11.**—(1.) Any power of the local authority under the Housing Acts, or under any scheme made in pursuance of any of those Acts, to provide dwelling accommodation or lodging-houses, shall include a power to provide and maintain, with the consent of the Local Government Board, and, if desired, jointly with any other person, in connection with any such dwelling accommodation or lodging-houses, any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the Local Government Board will serve a beneficial purpose in connection with the requirements of the persons for whom the dwelling accommodation or lodging-houses are provided, and to raise money for the purpose, if necessary, by borrowing.

(2.) The Local Government Board may, in giving their consent to the provision of any land or building

under this section, by order apply, with any necessary modifications, to such land or building any statutory provisions which would have been applicable thereto if the land or building had been provided under any enactment giving any local authority powers for the purpose.

12. Section seventy five of the principal Act (which relates to the condition to be implied on letting houses for the working classes) shall, as respects any contract made after the passing of this Act, take effect notwithstanding any agreement to the contrary, and any such agreement made after the passing of this Act shall be void.

13. -(1.) Any notice required to be served under Part II. of the principal Act upon an owner shall, notwithstanding anything in section forty-nine of that Act, be deemed to be sufficiently served if it is sent by post in a registered letter addressed to the owner or his agent at his usual or last known residence or place of business.

(2.) Any document referred to in section eighty-seven of the principal Act shall be deemed to be sufficiently served upon the local authority if addressed to that authority or their clerk at the office of that authority and sent by post in a registered letter.

*Special Provisions as to London.*

14. The council of a metropolitan borough may, if they think fit, pay or contribute towards the payment of any expenses of the London County Council under subsection five of section forty-six of the principal Act in connection with a scheme of reconstruction, and borrow any money required by them for the purpose under subsection two of the said section : but an order

under subsection six shall not be necessary except in cases of disagreement between the county council and the council of the borough.

15. For the purpose of carrying into effect the provisions of this Act as to the maximum period for which money may be borrowed, eighty years shall be substituted for sixty years in section twenty seven of the Metropolitan Board of Works (Loans) Act, 1869, and such sum as will be sufficient, with compound interest, to repay the money borrowed within such period, not exceeding eighty years, as may be sanctioned by the London County Council, shall be substituted for two pounds per cent. in section one hundred and ninety of the Metropolis Management Act, 1855.

16. The Secretary of State shall be substituted for the Local Government Board in the application to the administrative county of London of the provisions of the Schedule to this Act, and of the provisions of this Act which require the consent of the Local Government Board to the exercise of additional powers given to a local authority by this Act in connection with the provision of dwelling accommodation or lodging-houses, until the powers and duties of the Secretary of State under those provisions are transferred to the Local Government Board in pursuance of this Act.

*Supplemental.*

17.—(1.) This Act may be cited as the Housing of the Working Classes Act, 1903, and the Housing of the Working Classes Acts, 1890 to 1900, and this Act may be cited together as the Housing of the Working Classes Acts, 1890 to 1903.

(2.) This Act shall not extend to Scotland or Ireland.

## SCHEDULE.

(1.) If in the administrative county of London or in any borough or urban district, or in any parish not within a borough or urban district, the undertakers have power to take under the enabling Act working-men's dwellings occupied by thirty or more persons belonging to the working class, the undertakers shall not enter on any such dwellings in that county, borough, urban district, or parish, until the Local Government Board have either approved of a housing scheme under this schedule or have decided that such a scheme is not necessary.

For the purposes of this schedule a house shall be considered a working-man's dwelling if wholly or partially occupied by a person belonging to the working classes, and for the purpose of determining whether a house is a working-man's dwelling or not, and also for determining the number of persons belonging to the working classes by whom any dwelling-houses are occupied, any occupation on or after the fifteenth day of December next before the passing of the enabling Act, or, in the case of land acquired compulsorily under a general Act without the authority of an order, next before the date of the application to the Local Government Board under this schedule, for their approval of or decision with respect to a housing scheme, shall be taken into consideration.

(2.) The housing scheme shall make provision for the accommodation of such number of persons of the working class as is, in the opinion of the Local Government Board, taking into account all the circumstances, required, but that number shall not exceed the aggregate number of persons of the working class displaced; and in calculating that number the Local Government Board shall take into consideration not only the persons of the working class who are occupying the working-men's dwellings which the undertakers have power to take, but also any persons of the working class who, in the opinion of the Local Government Board, have been displaced

within the previous five years in view of the acquisition of land by the undertakers.

(3.) Provision may be made by the housing scheme for giving undertakers who are a local authority, or who have not sufficient powers for the purpose, power for the purpose of the scheme to appropriate land or to acquire land, either by agreement or compulsorily under the authority of a Provisional Order, and for giving any local authority power to erect dwellings on land so appropriated or acquired by them, and to sell or dispose of any such dwellings, and to raise money for the purpose of the scheme as for the purposes of Part III. of the principal Act, and for regulating the application of any money arising from the sale or disposal of the dwellings: and any provisions so made shall have effect as if they had been enacted in an Act of Parliament.

(4.) The housing scheme shall provide that any lands acquired under that scheme shall, for a period of twenty-five years from the date of the scheme, be appropriated for the purpose of dwellings for persons of the working class, except so far as the Local Government Board dispense with that appropriation: and every conveyance, demise, or lease of any such land shall be endorsed with notice of this provision, and the Local Government Board may require the insertion in the scheme of any provisions requiring a certain standard of dwelling-house to be erected under the scheme, or any conditions to be complied with as to the mode in which the dwelling-houses are to be erected.

(5.) If the Local Government Board do not hold a local inquiry with reference to a housing scheme, they shall, before approving the scheme, send a copy of the draft scheme to every local authority, and shall consider any representation made within the time fixed by the Board by any such authority.

(6.) The Local Government Board may, as a condition of their approval of a housing scheme, require that the new dwellings under the scheme, or some part of them, shall be completed and fit for occupation before possession is taken of any working-men's dwellings under the enabling Act.

(7.) Before approving any scheme the Local Government Board may if they think fit require the undertakers to give such security as the Board consider proper for carrying the scheme into effect.

(8.) The Local Government Board may hold such inquiries as they think fit for the purpose of their duties under this schedule, and subsections one and five of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply for the purpose, and where the undertakers are not a local authority shall be applicable as if they were such an authority.

(9.) If the undertakers enter on any working-men's dwelling in contravention of the provisions of this schedule, or of any conditions of approval of the housing scheme made by the Local Government Board, they shall be liable to a penalty not exceeding five hundred pounds in respect of every such dwelling :

Any such penalty shall be recoverable by the Local Government Board by action in the High Court, and shall be carried to and form part of the Consolidated Fund.

(10.) If the undertakers fail to carry out any provision of the housing scheme, the Local Government Board may make such order as they think necessary or proper for the purpose of compelling them to carry out that provision, and any such order may be enforced by Mandamus.

(11.) The Local Government Board may, on the application of the undertakers, modify any housing scheme which has been approved by them under this Schedule, and any modifications so made shall take effect as part of the scheme.

(12.) For the purposes of this schedule—

(1) The expression "undertakers" means any authority, company, or person who are acquiring land compulsorily or by agreement under any local Act or Provisional Order or order having the effect of an Act, or are acquiring land compulsorily under any general Act :

- (b) The expression "enabling Act" means any Act of Parliament or Order under which the land is acquired :
- (c) The expression "local authority" means the council of any administrative county and the district council of any county district, or, in London, the council of any metropolitan borough, in which in any case any houses in respect of which the re-housing scheme is made are situated, or in the case of the city the common council :
- (d) The expression "dwelling" or "house" means any house or part of a house occupied as a separate dwelling :
- (e) The expression "working class" includes mechanics, artisans, labourers, and others working for wages ; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them.



## APPENDIX II.

*Annual Account under Housing of the Working Classes Act,  
1890.*

## PART II.

*Name of Local Authority.*

Accounts presented to the Local Government Board in pursuance of section 44 of the Housing of the Working Classes Act, 1890, in respect of the year ended March 25th 1898.

*Buildings unfit for Human Habitation.*

1. Number of representations made during the year to the Local Authority by their medical officer of health under section 30 of the Act.

2. Number of complaints made by householders under section 31 (1) during the year.

3. Number of complaints received by the medical officer of health either during the year or previously, as to which he made a representation to the Local Authority during the year that the dwelling-house was unfit for human habitation.

4. Total number of cases in which the Local Authority were engaged in proceedings during the year for closing dwelling-houses :—

(a) Number of such cases in which a closing order was made.

(b) Amounts, if any, of penalties imposed in these cases.

(c) Number of such cases in which steps were taken to make the dwelling-house fit for human habitation.



(d) Number of such cases in which the Local Authority ordered the demolition of the building.

5. Number of appeals during the year against orders of the Local Authority under section 35 (1).

6. Results of such appeals or of any appeals made before the commencement of the year which were decided during the year.

7. Number of charging orders made during the year under section 36.

*Obstructive Buildings.*

8. Number of representations made to the Local Authority during the year by their medical officer of health under section 38 of the Act as to pulling down obstructive dwellings.

9. Number of similar representations made by inhabitant householders during the year.

10. Proceedings of the Local Authority during the year in respect of representations under section 38 made during the year or previously :—

(a) Number of cases in which the objection of the owner were allowed.

(b) Number of cases in which the Local Authority made an order directing that the obstructive building should be pulled down.

(c) Number of cases in which the Local Authority purchased the land on which the obstructive building was erected.

(d) Number of cases in which the owner retained the site and received compensation for the pulling down of the building.

10. Number of cases in which the owners of adjoining properties were required to contribute to the compensation for demolition of obstructive buildings.

11. Number of appeals during the year against orders of the Local Authority under section 18 (3) of the Act.

12. Results of such appeals, or of any appeals, made of refusal of enforcement of the year which were decided during the year.

13. Number of cases in which schemes have been prepared during the year by the Local Authority under section 20 of the Act.

14. State other than from loans received during the year by the Local Authority under Part II of the Act.

Receives—

Sales of property

Fines and penalties

Other receipts viz—

15. Sources of income other than out of loans during the year by the Local Authority under Part II of the Act.

In respect of the sums spent for human habitation—

Local expenses—

Demolition of buildings

Other expenses viz—

Expenditure on obstructive buildings—

Local expenses—

Particulars viz—

Compensation where owner retains site.

Other expenses viz—

In respect of schemes for reconstruction—

- Legal expenses
- Parliamentary expenses (if any)
- Purchase of lands
- Execution of works
- Other expenses

16. Amount raised by loans raised under Part II of the Act

17. Amount expended on the works authorised by the Act under Part II of the Act

18. Total balance brought forward of the year of the loans raised under Part II of the Act

Clerk to the Local Authority.

Dated            day of            190

ORDER of the HON. SECRETARY prescribing Forms of Notices and Advertisements under section 27 for use in London, November 16th 1890.

To the London County Council and to the Commissioners of Sewers of the City of London being the Local Authority for the County of London and for the City of London under the provisions of Part I of that Act:

And whereas by section 27 of the same Act it is enacted that the Confirming Authority may by order prescribe the Forms of Advertisements and Notices under Part I of that Act and that it shall not be obligatory on any persons to adopt such forms, but the same when adopted shall be deemed sufficient for all the purposes of that part of the said Act.

S. STEVENSON, Secy.

Now therefore I, the Right Honourable Henry Matthews, one of Her Majesty's Principal Secretaries of State, do by this my Order prescribe the Forms of Advertisements and Notices herein-after set out and declare that they may be adopted by the London County Council or by the Commissioners of Sewers of the City of London for the purposes of Part I. of the said Act.

## I.

[Form of Advertisement.]

County of London or City of London.

HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 & 54 Vict. c. 70.)

*Notice relating to Improvement Scheme.*

Notice is hereby given that the London County Council (or the Commissioners of Sewers), being the Local Authority for the County of London (City of London), have, in pursuance of the Housing of the Working Classes Act, 1890, made a scheme for the improvement of the area or areas, the limits of which are stated in the Schedule hereunder, and which contains or contain by estimation

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and particulars and estimates, have been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

## SCHEDULE.

The area to which the Scheme relates is bounded as follows:—

On the north by \_\_\_\_\_; on the south by \_\_\_\_\_;  
 \_\_\_\_\_; on the east by \_\_\_\_\_; on the  
 west by \_\_\_\_\_; [or the area to which the

Scheme relates is bounded by a line commencing  
(*set out the entire linear boundary*), & the area to  
which the Scheme relates consists of the following  
streets and other places or parts thereof.

(Signed)

Clerk to the London County Council,

or Town Clerk.

[*As the case may be.*]

Dated                      day of

## II.

[*Form of Notice to Owner and Lessee.*]

County of London or City of London.

HOUSING OF THE WORKING CLASSES ACT, 1890

(53 & 54 Vict. c. 70.)

*Notice to owner or reputed owner, lessor or reputed lessee,  
of intentions to take lands compulsorily under an  
Improvement Scheme.*

To

Take Notice, that a petition is about to be presented  
by the London County Council (or the Commissioners  
of Sewers)<sup>1</sup>, being the Local Authority for the County  
of London (City of London), to the Secretary of State in  
pursuance of the Housing of the Working Classes Act,  
1890, praying that an Order may be made confirming an  
Improvement Scheme, whereby it is proposed to take  
compulsorily the lands described in the Schedule here-  
under, in which lands you are believed to be interested  
as owner or reputed owner or lessee or reputed lessee.

You are therefore required to return to me on or  
before the                      day of                      next an  
answer in writing whether you dissent or not in respect  
of the taking of the lands described in the said Schedule.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

<i>Name of Street, Ward, Avenue, or other Place.</i>	<i>Description of Land proposed to be taken.</i>	<i>Owner, or reputed owner.</i>	<i>Lessor or reputed Lessor.</i>	<i>Occupier.</i>

(Signed)

Clerk to the London County Council,  
or Town Clerk.  
*As the case may be.*]

Dated the \_\_\_\_\_ day of \_\_\_\_\_.

### III.

[*Form of Notice to Occupiers.*]

County of London or City of London.

HOUSING OF THE WORKING CLASSES ACT, 1890

(53 & 54 Viet. c 70.).

*Notice to occupier or occupiers (not being owners or reputed owners or lessors or reputed lessors) of an intention to take lands compulsorily under an Improvement Scheme.*

To A. B., the occupier of the [or to  
the occupier or occupiers of the house] which in the

Schedule hereunder is described as the lands proposed to be taken.

Take Notice, that a petition is about to be presented by the London County Council (or the Commissioners of Sewers), being the Local Authority for the County of London (City of London), to the Secretary of State in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme whereby it is proposed to take compulsorily the lands described in the Schedule hereunder.

A copy of the said Scheme accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

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*Name of Street, Court, Alley,  
or other Place.*

*Description of Lands proposed  
to be taken.*

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(Signed)

Clerk to the London County Council,  
or Town Clerk,

[*As the case may be.*]

Dated \_\_\_\_\_ day of \_\_\_\_\_.

Given under my hand at Whitehall this fifth day of  
November one thousand eight hundred and ninety.

HENRY MATTHEWS.

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GENERAL ORDER of the LOCAL GOVERNMENT BOARD  
prescribing FORMS under section 27, dated 2nd  
October 1890.

To the several Urban Sanitary Authorities for the time  
being in England and Wales :

And to all others whom it may concern.

Whereas by section 8 of the Housing of the Working  
Classes Act, 1890, we, the Local Government Board, are  
constituted the Confirming Authority for every Improve-  
ment Scheme made by an Urban Sanitary Authority in  
pursuance of Part I. of that Act.

And whereas by section 27 of the same Act it is  
enacted that the Confirming Authority may by Order  
prescribe the Forms of Advertisements and Notices  
under Part I. of that Act : and that it shall not be  
obligatory on any persons to adopt such Forms, but the  
same when adopted shall be deemed sufficient for all the  
purposes of that part of the said Act :

Now therefore we, the Local Government Board, do  
by this our Order prescribe the Forms of Advertisements  
and Notices herein-after set out, and declare that they  
may be adopted by any Urban Sanitary Authority for  
the purposes of Part I. of the said Act.

# I.

[*Form of Advertisement.*]

The Urban Sanitary District of  
HOUSING OF THE WORKING CLASSES ACT, 1890  
(53 & 54 Vict. c. 70.).

*Advertisement of an Improvement Scheme.*

Notice is hereby given that \_\_\_\_\_, being the  
Sanitary Authority for the Urban Sanitary District of \_\_\_\_\_  
\_\_\_\_\_, having in pursuance of the Housing of the



Working Classes Act, 1890, made a Scheme for the improvement of the area or areas the limits of which are stated in the Schedule hereunder and which contains or contain by estimation.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

#### SCHEDULE.

The area to which the Scheme relates is bounded as follows :—

On the north by \_\_\_\_\_ : on the south by \_\_\_\_\_  
 ; on the east by \_\_\_\_\_ : on the  
 west by \_\_\_\_\_ : [or the area to which the  
 Scheme relates is bounded by a line commencing  
 (*set out the entire linear boundary*) : or the area to  
 which the Scheme relates consists of the following  
 streets and other places or parts thereof].

(Signed) \_\_\_\_\_,

Town Clerk or Clerk to the \_\_\_\_\_  
 [*As the case may be.*]

Dated \_\_\_\_\_ day of \_\_\_\_\_.

#### II.

[*Form of Notice to Owners and Lessees.*]

The Urban Sanitary District of \_\_\_\_\_.

HOUSING OF THE WORKING CLASSES ACT, 1890

(53 & 54 Vict. c. 70.).

*Notice to owner or reputed owner, lessee or reputed lessee,  
 of intention to take lands compulsorily under an  
 Improvement Scheme.*

To \_\_\_\_\_.

Take Notice, that a petition is about to be presented  
 by the \_\_\_\_\_, being the Sanitary Authority for the

Urban Sanitary District of \_\_\_\_\_, to the Local Government Board, in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme whereby it is proposed to take compulsorily the lands described in the Schedule hereunder, in which lands you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee.

You are, therefore, hereby required to return to me, on or before the \_\_\_\_\_ day of \_\_\_\_\_ next, an answer in writing whether you dissent or not in respect of the taking of the lands described in the said Schedule.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

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<i>Name of Street, Court, Alley, or other Place.</i>	<i>Description of Lands proposed to be taken.</i>	<i>Owner or reputed Owner.</i>	<i>Lessee or reputed Lessee.</i>	<i>Occupier.</i>
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(Signed) \_\_\_\_\_,

Town Clerk or Clerk to the \_\_\_\_\_.

[As the case may be.]

Dated \_\_\_\_\_

day of \_\_\_\_\_.

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## III.

[*Form of Notice to Occupiers.*]

The Urban Sanitary District of \_\_\_\_\_  
**HOUSING OF THE WORKING CLASSES ACT, 1890**  
 (53 & 54 Vict. c. 70.).

*Notice to occupier or occupiers (not being owners or reputed owners, or lessees or reputed lessees) of an intention to take lands compulsorily under an Improvement Scheme.*

To A. B., the occupier of the [or to the occupier or occupiers of the house] which in the Schedule here under is described as the lands proposed to be taken.

Take Notice, that a petition is about to be presented by the \_\_\_\_\_, being the Sanitary Authority for the Urban Sanitary District of \_\_\_\_\_, to the Local Government Board in pursuance of the Housing of the Working Classes Act, 1890, praying that an Order may be made confirming an Improvement Scheme whereby it is proposed to take compulsorily the lands described in the Schedule hereunder.

A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at \_\_\_\_\_, and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

*Name of Street, Court, Alley,  
or other Place.*

*Description of Lands proposed  
to be taken.*

(Signed)

Town Clerk or Clerk to the \_\_\_\_\_,  
 [As the case may be.]

Dated \_\_\_\_\_ day of \_\_\_\_\_.

Given under the Seal of Office of the Local Government Board this second day of October in the year one thousand eight hundred and ninety,

CHAS. J. RITCHIE,  
President.

HUGH ANSON,  
Secretary.

Date of publication in the London Gazette,  
October 3rd, 1890.



**Circular Letter to Town Councils and Urban District Councils from the Local Government Board (dated 22nd September 1903).**

SIR,

I AM directed by the Local Government Board to draw the attention of the Council to the provisions of the Housing of the Working Classes Act, 1903 (3 Edw. 7. c. 39), which has recently received the Royal Assent, and which has introduced important amendments into the law relating to the housing of the working classes. In this Act the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), is referred to as "the principal Act," and that Act, and any Acts (including the new Act) amending it, are collectively referred to as "the Housing Acts." It will be convenient to make use of these terms in the present circular.

*Maximum period for repayment of loans.—Limit of borrowing power.*

Under the principal Act the Council are empowered to borrow money whether for the purposes of Part I., Part II., or Part III. of that Act in the same manner as under the Public Health Acts, and accordingly section 234 of Public Health Act, 1875 (38 & 39 Vict. c. 55), applies in regard to any loan that may be thus raised. The result is that any loan for the purposes of the Housing Acts must be repaid within such period not exceeding 60 years as the Council, with the sanction of the Board, determine in each case (see section 234 (4) (6) of the

Public Health Act, 1875). Moreover the amount which a local authority may borrow under the Public Health Act is limited to two years' assessable value of the district, and if it is proposed to borrow a sum which, together with the balances of all the outstanding loans contracted by the Council under the Sanitary Acts and the Public Health Acts, would exceed one year's assessable value, a local inquiry must be held by one of the inspectors of the Board before the loan is sanctioned. (See section 234 (2) (3) of the Public Health Act, 1875.)

These provisions are considerably amended by section 1 of the new Act. The effect of subsection (1) of this section is to extend the maximum period for the repayment of loans raised for the purposes of the principal Act, or any Acts amending it, to 80 years, leaving the actual period for repayment, subject to this limitation, to be determined as heretofore with the sanction of the Board.

The next subsection will prevent any loans raised for the purposes of the Housing Acts from being taken into account for the purposes of the limitations on borrowing above referred to.

The Board may state that they propose in future as a general rule to allow the full term of 80 years for the repayment of money borrowed for the purchase of freehold land, and 60 years for the repayment of money borrowed for the erection of buildings under the Housing Acts, where the circumstances are such that this may properly be done. Where money has been borrowed in recent years for these purposes, they will be ready to consider applications for sanction to the reborrowing of the outstanding balances for 80 or 60 years (as the case may be) from the date of the original borrowing, if the money has been borrowed on terms which will admit of this.

*Housing obligations where land is taken under statutory powers.*

The Standing Orders of the Houses of Parliament require that in all Bills for local Acts (including Bills to confirm Provisional Orders) which give power to take land compulsorily or by agreement, clauses shall be inserted providing that the promoters of the Bill shall not in the exercise of such power acquire more than a prescribed number of houses occupied by persons belonging to the labouring class, unless they have obtained the necessary approval to a scheme for providing certain housing accommodation.

A Joint Committee of both Houses recommended last year that provision on the subject should be embodied in a general Act of Parliament. This is done by section 3 of the new Act, which will apply to all cases where, under the powers given by any future local Act or Provisional Order, or Order having the effect of an Act, land is acquired, whether compulsorily or by agreement, by any authority, company, or person, or where land is so acquired compulsorily under any general Act other than the Housing Acts. The Housing Acts are excepted because they contain special provisions on the subject.

Particulars of the requirements imposed on any such authority, company or person are contained in the Schedule to the Act, which provides that if in any borough, urban district, or rural parish the authority, company or person have power to take under the Act or Order under which the land is acquired, working men's dwellings occupied by 30 or more persons belonging to the working class, they shall not enter on any such dwellings until the Board have either approved of a housing scheme, or decided that a scheme is not

necessary. The Schedule sets out generally the requirements of a housing scheme, and contains various provisions in relation to the making, enforcement and modification of such schemes.

*Failure of local authority to make improvement scheme.*

By section 19 of the principal Act, where outside London an official representation is made to the Council of a Borough or Urban District with a view to their passing a resolution in favour of an improvement scheme under Part I. of the Act, and the Council fail to pass any resolution in relation to such representation or pass a resolution to the effect that they will not proceed with such scheme, the Board are empowered to direct a local inquiry to be held and a report to be made to them as to the correctness of the official representation and any matters connected therewith on which they may desire to be informed.

The powers thus given to the Board are supplemented by section 4 (1) of the new Act. This enactment enables them, if, on the report made to them on an inquiry directed as above-mentioned, they are satisfied that a scheme ought to have been made for the improvement of the area to which the inquiry relates, or some part thereof, to order the Council to make such a scheme. The scheme may be ordered to be made under either Part I., or Part II., of the principal Act, and the Council may be ordered to do all things necessary under the Housing Acts for carrying the scheme so made into execution.

Where an Order of this nature is made, it will be the duty of the Council to make a scheme under Part I., or to direct a scheme to be prepared under Part II., of the principal Act, as if they had passed the resolution required under section 4 or section 39 (as the case may



be) of that Act, and to do all things necessary under the Housing Acts for carrying the scheme into effect.

The Order of the Board will be enforceable by mandamus.

By section 16 (1) of the principal Act, where 12 or more ratepayers in a district outside London have complained to the medical officer of health of the unhealthiness of any area in the district, and the medical officer of health (a) has failed to inspect or to make an official representation with respect to the area, (b) has made an official representation to the effect that, in his opinion, the area is not an unhealthy area, such ratepayers are given the right to appeal to the Board.

Under this section as it stands it would seem that the right of appeal can only be exercised by the same ratepayers as originally made the complaint to the medical officer of health.

The new Act, however, provides by section 1 (2) that any 12 or more ratepayers of the district shall have the same right of appeal, under section 16 of the principal Act, as is given to the 12 or more ratepayers who have made the complaint to the medical officer of health mentioned in that section. Consequently it will not be necessary for the future that the complaining ratepayers and the appealing ratepayers should be the same persons.

*Procedure for complaining improvement scheme.*

It has hitherto been requisite under section 7 of the principal Act that, upon the completion of an improvement scheme under Part I. of the principal Act, the local authority should publish an advertisement stating certain prescribed particulars in a local newspaper during three consecutive weeks in the month of September, or October, or November, and should during the month next following the month in which the advertisement

was published serve certain prescribed notices. Moreover, any Provisional Order made by virtue of section 8 (4) of the principal Act confirming an improvement scheme has, under section 8 (6), required for its validity confirmation by Parliament.

Section 5 (1) of the new Act will enable the advertisements to be published for three consecutive weeks at any period of the year, and will allow the prescribed notices to be served during the thirty days next following the date of the last publication of the advertisement.

Section 5 (2) will render an Order of the Board confirming an improvement scheme effective without confirmation by Parliament in the following cases:—

- (a) If land is not proposed to be taken compulsorily or
- (b) If, although land is proposed to be taken compulsorily, the Board before making the Order are satisfied that notice of the draft Order has been served as required as respects a Provisional Order by subsection (5) of section 8 of the principal Act, and also that the draft Order has been published in the London Gazette, and that a petition against the draft Order has not been presented to them by any owner of land proposed to be taken compulsorily within two months after the date of the publication and the service of notice, or, having been so presented, has been withdrawn.

*Modifications of schemes under Parts I. and II. of the principal Act.*

By section 39 of the principal Act the Board have power, when sanctioning a reconstruction scheme under Part II. of that Act, to do so, subject to conditions or

modifications. But, previously to the passing of the new Act, they had not power, when the scheme had once been sanctioned, to introduce modifications into it for the purpose of meeting objections contained in a petition against the Order sanctioning it, although the objections to the scheme raised by the petition might in many instances have been met by some modification which the Board would regard as reasonable and the Council would be willing to accept. The same difficulty might arise in regard to improvement schemes sanctioned under section 8 (4) of the principal Act, as amended by section 5 (2) of the new Act.

The difficulty in each case is met by section 6 (1) of the new Act. If an Order made by the Board under section 8 (4) or under section 39 of the principal Act which, if no petition were presented, would take effect without confirmation by Parliament, is petitioned against the Board may, on the application of the Council, make any modifications in the scheme to which the Order relates for the purpose of meeting the objections of the petitioner, and withdraw the Order sanctioning the original scheme, substituting for it an Order sanctioning the modified scheme.

Where a scheme is thus modified and a substitutional Order is made sanctioning the modified scheme section 6 (2) of the Act directs that the same procedure shall be followed as to the publication and giving notices, and that the same provisions shall apply as to the presentation of petitions and the effect of the Order, in the case of the Order sanctioning the modified scheme, as in the case of the Order sanctioning the original scheme. But no petition is to be received or to have any effect except one which was presented against the original Order, or one which is concerned solely with the modifications made in the scheme as sanctioned by the new Order.

*Inclusion of neighbouring lands in reconstruction schemes under Part II. of principal Act.*

Cases sometimes occur where it will be found beneficial to include in a reconstruction scheme under Part II. of the principal Act some neighbouring lands, although not comprising buildings in themselves dangerous or prejudicial to health. Section 7 of the new Act will enable this to be done if the Council under whose direction the scheme is made are of opinion that the inclusion is necessary for making their scheme efficient. But where this course is adopted, the prohibition contained in section 41 (2) of the principal Act against giving any additional allowance in respect of compulsory purchase, in settling the amount of compensation, is excluded from application in the case of any land which may be thus included. The effect of the amendment of the law made by section 7 is virtually to make the provisions of Part II. of the principal Act uniform with those of Part I. in this matter.

*Procedure for obtaining closing orders.*

Where a Council desired to obtain a closing order in regard to a dwelling-house in a state so dangerous or injurious to health as to be unfit for human habitation, it has hitherto been necessary for them, under the procedure prescribed by section 32 of the principal Act, before they could obtain the order, to give notice to the owner or occupier of the house to abate the nuisance. The procedure is now simplified as regards any dwelling-house which in the opinion of the Council is either (a) not reasonably capable of being made fit for human habitation, or (b) is in such a state that its occupation

should be immediately discontinued. In these cases the necessity for serving such a notice as above mentioned before obtaining a closing order is dispensed with by section 8 (1) of the new Act, which further enables a justice to issue a summons for a closing order, and a closing order to be granted, though such a notice has not been served. Section 8 (2) empowers the Board to prescribe forms in substitution for those in Schedule IV. to the principal Act, and section 32 of that Act will have effect as if the forms so prescribed were referred to therein in lieu of the forms in the Schedule. The Board will in due course issue an Order prescribing forms under the section. A copy of the Order when issued will be sent to the Council.

#### *Cost of demolition.*

Section 34 of the principal Act empowers the Council to demolish a house in respect of which an order for demolition has been made if the owner himself fails to comply with the order, and requires them to sell the materials, and after deducting the expenses of the demolition to pay the balance of money (if any) to the owner. There is, however, no provision to meet the case when the sale of the materials does not cover the cost of demolition. This is remedied by section 9 of the new Act, which enacts that, where the amount realised by the sale of materials under section 34 of the principal Act is not sufficient to cover the expenses incident to the taking down and removal of a building, the Council may recover the deficiency from the owner of the building as a civil debt in manner provided by the Summary Jurisdiction Acts, or under the provisions of the Public Health Acts relating to private improvement expenses.

*Recovery of possession of premises in pursuance of closing orders.*

A more speedy and efficacious way of obtaining possession of a house in respect of which a closing order has been made than that provided by section 32 (3) of the principal Act is afforded by section 10 of the new Act. Under its provisions the Council may have recourse, whatever may be the value or rent of the house, either to the procedure prescribed by sections 138 to 145 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), or to that under the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74). The expenses incurred by the Council in taking these proceedings can be recovered from the owner as a civil debt under the Summary Jurisdiction Acts. The power of enforcing the penalty provided for in section 32 (3) of the principal Act will still remain.

*New powers in connection with the provision of dwelling accommodation or lodging houses.*

The effect of section 11 (1) of the new Act is to empower the Council, if they provide lodging houses for the working classes under Part III. of the principal Act, or if they supply housing accommodation under the Housing Acts or under any scheme made in pursuance of these Acts, to provide and maintain, in connection with the lodging houses or dwelling accommodation, any building adapted for use as a shop, any recreation grounds, or other buildings or land which, in the opinion of the Board, will serve a beneficial purpose in connection with the requirements of the persons for whom the lodging houses or dwelling accommodation are provided. The consent of the Board is required to the exercise of these powers, which may, if desired, be exercised jointly

with any other person, and money may, if necessary, be raised by borrowing for the purpose of meeting the cost involved.

Section 11 (2) of the Act enables the Board, in giving their consent as above mentioned, to apply to any land or building which may be thus provided any statutory provisions which would have been applicable thereto if the land or buildings had been provided by the Council under the powers given to them for the purpose by any enactment.

*Condition to be implied on letting houses for working classes.*

Under section 75 of the principal Act a condition is implied in any contract made after the 14th August, 1885, for the letting of a house or part of a house for habitation by persons of the working classes (as such letting is therein defined) to the effect that the house is at the commencement of the holding fit for human habitation.

As this enactment stood prior to the passing of the new Act, it would seem that there was nothing to prevent an agreement being made between the landlord and the tenant contracting themselves out of its provisions. Any such agreement made after the date of the passing of the present Act (14th August, 1903) is made void by section 12.

*Service of notices.*

The service of notices and other documents is facilitated by section 13 of the new Act.

Subsection (1) enables sufficient service of a notice upon an owner under Part II. of the principal Act to be effected by sending the notice by post in a registered letter addressed to him or his agent at his usual or last

known residence or place of business. Subsection (2) enables any notice, summons, writ or other proceeding at law or otherwise, required to be served on the Council in relation to carrying into effect the objects or purposes of the principal Act or any of them, to be served upon them by addressing the document in question to the authority or their clerk at their office and sending it by post in a registered letter.

It will be seen that the new Act gives various facilities to the Councils of Boroughs and Urban Districts for carrying out the Housing Acts, and the Board trust that its effect will be to stimulate the Councils to exercise the very considerable powers which they possess under these Acts.

I am, Sir,

Your obedient Servant,

S. B. Provis,

Secretary.

The Town Clerk,

The Clerk to the Urban District Council.



**Circular Letter to Metropolitan Borough Councils  
from the Local Government Board (dated  
28th October 1903).**

SIR,

I AM directed by the Local Government Board to draw the attention of the Council to certain provisions of the Housing of the Working Classes Act, 1903 (3 Edw. 7, c. 39), which has recently received the Royal Assent, and which has introduced important amendments into the law relating to the housing of the working classes. In this Act, the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), is referred to as "the principal Act," and that Act, and any Acts (including the new Act) amending it, are collectively referred to as "the Housing Acts." It will be convenient to make use of those terms in the present circular.

*Maximum period for repayment of loans.*

By section 46 (2) of the principal Act the raising by the Council, as a local authority under Part II. of that Act, of sums required for purchase money or compensation payable under that part is made a purpose for which they may borrow under the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), and sections 183 to 191 of the latter Act are made applicable accordingly. Under these sections the Council may borrow, with the consent of the London County Council, but under section 190 they are required, in order to form a sinking fund for

paying off mortgages created under the Act, to set aside in every year a sum not less than two pounds per cent. on the amount of the principal moneys secured thereby, which sum is to accumulate at compound interest.

Further, the Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 55) makes it clear that the power given by section 46 (2) of the principal Act extends to any purpose for which the Council are authorised to borrow by a scheme for re-construction duly sanctioned under Part II. of that Act or by the Order sanctioning the scheme.

Moreover, if the Council have adopted Part III. of the principal Act, and have thus become a local authority under that Part, their power to borrow for the purposes of that Part is made exercisable by section 3 (2) of the Housing of the Working Classes Act, 1900 (63 & 64 Vict. c. 59), in like manner and subject to the like conditions as their power to borrow for the purposes of Part II. of the principal Act.

Section 1 (1) of the new Act provides that the maximum period which may be sanctioned as the period for which money may be borrowed by a local authority for the purposes of the principal Act, or any Acts amending it, shall be 80 years.

As consequential upon this provision, it is enacted by section 15 that for the purposes of carrying into effect the provisions of the Act as to the maximum period for which money may be borrowed, such sum as will be sufficient, with compound interest, to repay the money borrowed within such period, not exceeding 80 years, as may be sanctioned by the London County Council, shall be substituted for two pounds per cent. in section 199 of the Metropolis Management Act, 1855, above referred to.

*Transfer of powers and duties of Home Office to Local Government Board.*

Under the existing Housing Acts, some of the functions of the Central Authority in regard to London are at present exercised by the Secretary of State, and some by the Local Government Board. Section 2 of the new Act makes provision for an Order in Council being made assigning to the Board any powers and duties of the Secretary of State under the Housing Acts, or under any scheme made in pursuance of those Acts, and the powers of the Secretary of State under any local Act, so far as they relate to the housing of the working classes. Any such powers and duties assigned will then become powers and duties of the Local Government Board.

*Housing obligations where land is taken under statutory powers.*

The Standing Orders of the Houses of Parliament require that in all Bills for local Acts (including Bills to confirm Provisional Orders) which give power to take land compulsorily or by agreement, clauses shall be inserted providing that the promoters of the Bill shall not, in the exercise of such power, acquire more than a prescribed number of houses occupied by persons belonging to the labouring class, unless they have obtained the necessary approval to a scheme for providing certain housing accommodation.

A Joint Committee of both Houses recommended last year that provisions on the subject should be embodied in a general Act of Parliament. This is done by section 3 of the new Act which will apply to all Acts where, under the powers given by any future local Act or Provisional Order, or Order having the effect of an Act, land is acquired, whether compulsorily or by

agreement, by any authority, company or person, or where land is so acquired compulsorily under any general Act other than the Housing Acts. The Housing Acts are excepted, because they contain special provisions on the subject.

Particulars of the requirements imposed on any such authority, company or person are contained in the Schedule to the Act, which provides that if in the administrative county of London, the authority, company or person have power to take, under the Act or Order under which the land is acquired, working men's dwellings occupied by 30 or more persons belonging to the working class they shall not enter on any such dwellings until the Local Government Board have either approved of a housing scheme or decided that a scheme is not necessary. The Schedule sets out generally the requirements of a housing scheme, and contains various provisions in relation to the making, enforcement and modification of such schemes. It is, however, provided by section 16 of the new Act that the Secretary of State shall be substituted for the Board in the application of the provisions of this Schedule, until the powers and duties of the Secretary of State under those provisions are transferred to the Board in pursuance of the enactment above mentioned.

*Modifications of schemes under Part II. of principal Act.*

By section 39 of the principal Act the Board have power, when sanctioning a reconstruction scheme under Part II. of that Act, to do so subject to conditions or modifications. But previously to the passing of the new Act, they had not power, when the scheme had once been sanctioned, to introduce modifications into it for the purpose of meeting objections contained in a petition against the order sanctioning it, although the

objections to the scheme raised by the petition might, in many instances, have been met by some modification which the Board would regard as reasonable, and the local authority would be willing to accept.

The difficulty in such a case is met by section 6 (1) of the new Act. If an Order made by the Board under section 39 of the principal Act which, if no petition were presented, would take effect without confirmation by Parliament is petitioned against, the Board may, on the application of the local authority, make any modifications in the scheme to which the Order relates for the purpose of meeting the objections of the petitioner, and withdraw the Order sanctioning the original scheme, substituting for it an Order sanctioning the modified scheme.

Where a scheme is thus modified, and a substitutional Order is made sanctioning the modified scheme, section 6 (2) of the Act prescribes that the same procedure shall be followed as to the publication and giving notices, and that the same provisions shall apply as to the presentation of petitions, and the effect of the Order, in the case of the Order sanctioning the modified scheme, as in the case of the Order sanctioning the original scheme. But no petition is to be received or to have any effect except one which was presented against the original Order, or one which is concerned solely with the modifications made in the scheme as sanctioned by the new Order.

*Inclusion of neighbouring lands in reconstruction schemes under Part II. of the principal Act.*

Cases sometimes occur where it will be found beneficial to include in a reconstruction scheme under Part II. of the principal Act some neighbouring lands.

although not comprising buildings in themselves dangerous or prejudicial to health. Section 7 of the new Act will enable this to be done if the local authority under whose direction the scheme is made are of opinion that the inclusion is necessary for making their scheme efficient. But where this course is adopted, the prohibition contained in section 41 (2) of the principal Act against giving any additional allowance in respect of compulsory purchase, in settling the amount of compensation, is excluded from application in the case of any land which may be thus included.

*Agreements between London County Council and Metropolitan Borough Councils in regard to schemes under Part II. of principal Act.*

In cases where the London County Council carry out reconstruction schemes under the provisions of subsection (5) of section 46 of the principal Act, the Secretary of State is empowered by subsection 6 of that section, in certain circumstances, to order a payment or contribution towards the expenses of the London County Council to be made by the council of a Metropolitan Borough, but hitherto in the absence of such an Order the Metropolitan Borough Council have had no power to make any such payment or contribution.

The new Act, by section 14, enables a Metropolitan Borough Council, if they think fit, to pay or contribute to the payment of any expenses of the London County Council under section 46 (5) of the principal Act in connection with a scheme of reconstruction, and to borrow any money required for the purpose under section 46 (2), and provides that an Order of the Secretary of State, as above mentioned, shall not be necessary except in cases of disagreement between the County Council and the Council of the Borough.

*Procedure for obtaining closing orders.*

Where a local authority desired to obtain a closing order in regard to a dwelling house in a state so dangerous or injurious to health as to be unfit for human habitation, it has hitherto been necessary for them, under the procedure prescribed by section 32 of the principal Act, before they could obtain the order, to give notice to the owner or occupier of the house to abate the nuisance. This procedure is now simplified as regards any dwelling house which in the opinion of the local authority is either (a) not reasonably capable of being made fit for human habitation, or (b) is in such a state that its occupation should be immediately discontinued. In these cases the necessity for serving such a notice as above mentioned before obtaining a closing order is dispensed with by section 8 (1) of the new Act, which further enables a justice to issue a summons for a closing order, and a closing order to be granted, though such a notice has not been served. Section 8 (2) empowers the Board to prescribe forms in substitution for those in Schedule IV. to the principal Act, and section 32 of that Act will have effect as if the forms so prescribed were referred to therein in lieu of the forms in the Schedule. The Board will in due course issue an Order prescribing forms under the section. A copy of the Order when issued will be sent to the Council.

*Cost of demolition.*

Section 34 of the principal Act empowers the local authority to demolish a house in respect of which an order for demolition has been made if the owner himself fails to comply with the order, and requires them to sell the materials, and after deducting the expenses of the demolition to pay the balance of money (if any) to the

owner. There is, however, no provision to meet the case when the sale of the materials does not cover the cost of demolition. This is remedied by section 9 of the new Act, which enacts that where the amount realised by the sale of materials under section 34 of the principal Act is not sufficient to cover the expenses incident to the taking down and removal of a building, the local authority may recover the deficiency from the owner of the building as a civil debt in manner provided by the Summary Jurisdiction Acts, or under the provisions of the Public Health Acts relating to private improvement expenses.

*Recovery of possession of premises in pursuance of closing orders.*

A more speedy and efficacious way of obtaining possession of a house in respect of which a closing order has been made than that provided by section 32 (3) of the principal Act is afforded by section 10 of the new Act. Under its provisions the local authority may have recourse, whatever may be the value or rent of the house, either to the procedure prescribed by sections 138 to 145 of the County Courts Act, 1888, or to that under the Small Tenements Recovery Act, 1838. The expenses incurred by the local authority in taking these proceedings can be recovered from the owner as a civil debt under the Summary Jurisdiction Acts. The power of enforcing the penalty provided for in section 32 (3) of the principal Act will still remain.

*New powers in connection with the provision of dwelling accommodation or lodging houses.*

The effect of section 11 (1) of the new Act is to empower the Council if they provide lodging houses for the working classes under Part III. of the principal



Act, or if they supply housing accommodation under Part II. of the principal Act, or under any scheme made in pursuance of any of the Housing Acts, to provide and maintain, in connection with the lodging houses or dwelling accommodation, any building adapted for use as a shop, any recreation grounds or other buildings or land which in the opinion of the Board will serve a beneficial purpose in connection with the requirement of the persons for whom the lodging houses or dwelling accommodation are provided. The consent of the Board is required to the exercise of the powers of section 11 (1), which may, if desired, be exercised jointly with any other person; and money may, if necessary, be raised, by borrowing, for the purpose of meeting the cost involved.

Section 11 (2) of the Act enables the Board in giving their consent as above-mentioned, to apply to any land or building which may be thus provided any statutory provisions which would have been applicable thereto if the land or buildings had been provided by the Council under the powers given to them for the purpose by any enactment.

It is, however, provided by section 16 of the new Act that the Secretary of State shall be substituted for the Board in the application to the administrative County of London of the provisions requiring the consent of the Board to the exercise of additional powers given to a local authority by the Act in connection with the provision of dwelling accommodation or lodging-houses, until the powers and duties of the Secretary of State under those provisions are transferred to the Board in pursuance of the Act as above-mentioned. For the present, therefore, the Secretary of State, and not the Board, will be the central authority for the purposes of section 11 so far as the Metropolis is concerned.

*Conditions to be implied on letting houses for the working classes.*

Under section 75 of the principal Act a condition is implied in any contract made after the 14th August, 1885, for the letting of a house or part of a house for habitation by persons of the working classes (as such letting is therein defined) to the effect that the house is, at the commencement of the holding, fit for human habitation.

As this enactment stood prior to the passing of the new Act it would seem that there is nothing to prevent an agreement being made between the landlord and the tenant contracting themselves out of its provisions. Any such agreement made after the date of the passing of the present Act (14th August, 1903) is made void by section 12.

*Service of notices.*

The service of notices and other documents is facilitated by section 13 of the new Act.

Subsection (1) enables sufficient service of a notice upon an owner under Part II. of the principal Act to be effected by sending the notice by post in a registered letter addressed to him, or his agent, at his usual, or last known residence, or place of business. Subsection (2) enables any notice, summons, writ, or other proceedings at law or otherwise required to be served on a local authority in relation to carrying into effect the objects or purposes of the principal Act, or any of them, to be served upon the local authority by addressing the document in question to the authority, or their clerk at the office of the authority, and sending it by post in a registered letter.

It will be seen that the new Act gives various facilities to the Metropolitan Borough Councils for carrying out the Housing Acts, and the Board trust that its effect will be to stimulate the Councils to exercise the very considerable powers which they possess under those Acts.

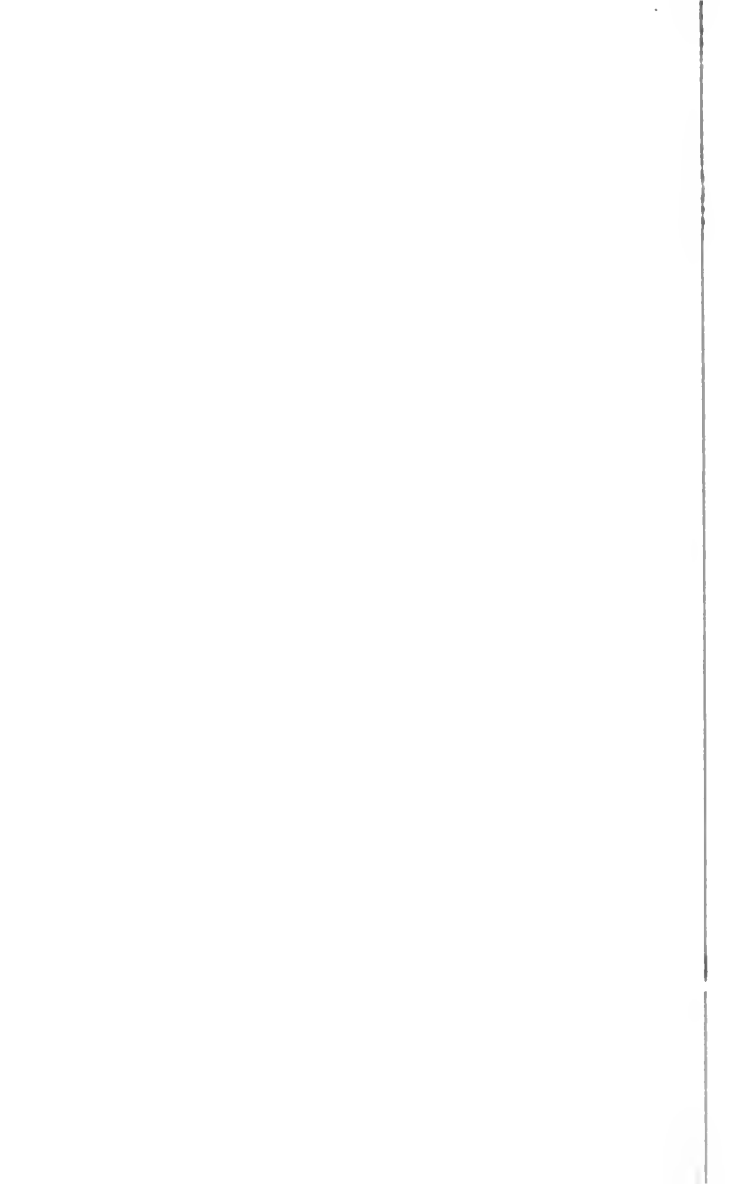
I am, Sir,

Your obedient Servant,

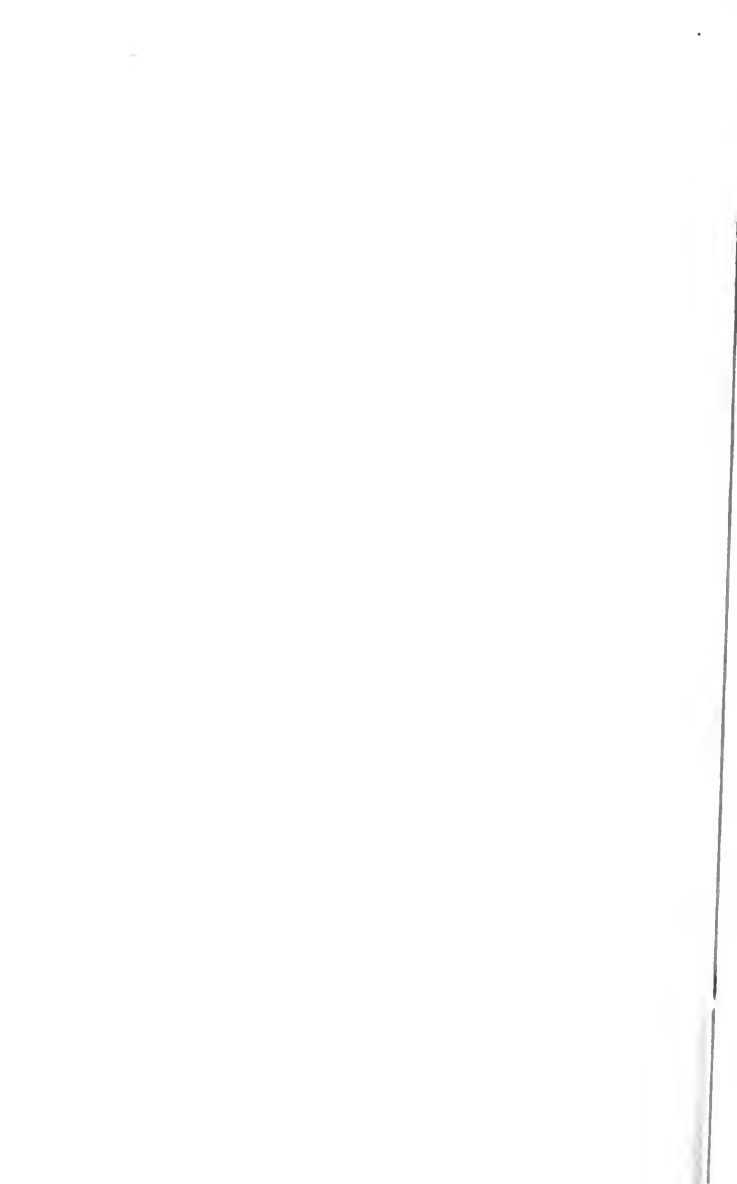
S. B. PROVIS,

Secretary.

The Town Clerk.



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